

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1953

No. 34

**HOWELL CHEVROLET COMPANY, A CORPORATION,
PETITIONER,**

vs.

NATIONAL LABOR RELATIONS BOARD

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 8, 1953

CERTIORARI GRANTED MAY 18, 1953

No. 13140

**United States
Court of Appeals**
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

**HOWELL CHEVROLET COMPANY, a Corpora-
tion,**

Respondent.

Transcript of Record

**Petition for Enforcement of Order of the
National Labor Relations Board**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. 21-CA-794

In the Matter of

HOWELL CHEVROLET COMPANY,
and
INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE No. 727.

COMPLAINT

It having been charged by International Association of Machinists, District Lodge No. 727, herein called Lodge 727, that Howell Chevrolet Company has engaged in and is engaging in unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, as amended, Public Law 101—80th Congress, First Session, hereinafter called the Act, the General Counsel of the National Labor Relations Board, by the Regional Director for the Twenty-First Region designated by the Board's Rules and Regulations, Series 5, Section 102.15, hereby issues this Complaint and alleges as follows:

1. Howell Chevrolet Company, a corporation organized and existing by virtue of the laws of the State of California, herein called Respondent Howell, is engaged in, and at all times material herein, has been engaged in the operation of an automobile agency dealership and repair shop in

Glendale, California, for the sale and distribution of new Chevrolet motor cars, trucks and parts under a franchise or dealer's agreement with the Chevrolet Division of General Motors Corporation.

2. Respondent Howell, in the course and conduct of its business, has caused and is causing large amounts of equipment, materials and supplies to be acquired and purchased, transported and delivered in interstate commerce from and through states of the United States other than the State of California to its place of business in Glendale, California.

3. Respondent Howell, in the course and conduct of its business, as specified above, obtains large numbers of new Chevrolet motor cars and trucks from the Chevrolet Division of General Motors Corporation assembly plant in Van Nuys, California, of which more than 50 per cent of the parts, equipment and supplies used in the assembly of such motor cars and trucks was shipped from outside the State of California.

4. International Association of Machinists, District Lodge No. 727, is a labor organization within the meaning of Section 2, subsection (5) of the Act.

5. On January 31, 1950, Lodge 727, pursuant to Section 9 (c) of the Act, duly filed with the Board a Petition for Certification of Representatives in Matter of Howell Chevrolet Co., Case No. 21-RC-1146. Following a hearing, the Board, on May 5,

1950, directed that an election be held among employees of Respondent Howell. On June 1, 1950, pursuant to the direction of the Board, an election was conducted. On June 7, 1950, Lodge 727 filed objections to conduct affecting the results of said election. On August 9, 1950, the Acting Regional Director for the Twenty-First Region of the Board issued his Report on Objections. On August 29, 1950, the Board issued an Order Directing Hearing on Objections.

6. A unit composed of all employees of Respondent Howell at its establishment at Glendale, California, excluding salesmen, office and clerical employees, professional employees, guards and supervisors as defined in the Act, is a unit appropriate for the purposes of collective bargaining as defined in Section 9 of the Act.

7. At all times since on or about January 31, 1950, Lodge 727 has been and now is the duly designated collective bargaining representative of the employees in the unit set forth in paragraph 6 hereof.

8. From on or about January 31, 1950, to the date hereof, Respondent Howell, by its officers, supervisors, agents and representatives, including, but not limited to Frederick A. Potruch, has failed and refused, and does now fail and refuse, to bargain collectively with Lodge 727 with respect to wages, hours and conditions of employment of the employees in the unit set forth in paragraph 6 hereof.

9. Respondent Howell, by its officers, supervisors, agents and representatives, including, but not limited to Frederick A. Potruch, from on or about January 31, 1950, to the date hereof, has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, by various acts and statements including, but not limited to, the following:

(a) Coercing and intimidating employees by threats of reprisal if they should join Lodge 727 and promises of reward if they should refrain from supporting Lodge 727;

(b) Stating to employees that, if Lodge 727 won the election referred to in paragraph 5 hereof, it would not bargain with Lodge 727 or enter into a contractual relationship with it; and

(c) Stating to employees that it would discriminate against employees engaging in strikes or other concerted activities because of respondent's refusal to bargain with Lodge 727.

10. Respondent Howell, by its officers, agents and supervisory employees, did, on or about March 31, 1950, discharge Claude Leonard because of his activities on behalf of and his membership in Lodge 727, and has thereafter refused reemployment to Claude Leonard because of his activities on behalf of and his membership in Lodge 727.

11. Respondent Howell, by its officers, agents and representatives, did, on or about March 31, 1950,

discharge Claude Leonard because he testified as a witness at a formal hearing in National Labor Relations Board case 21-RC-1146, and for the same reason has thereafter refused to reemploy him.

12. By the acts and conduct set forth and described in paragraphs 8 through 11 hereof, Respondent Howell has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby engage in and is now engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

13. By the acts and conduct set forth and described in paragraph 8 hereof, Respondent Howell has refused to bargain collectively with the representatives of its employees and did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

14. By the acts and conduct set forth and described in paragraph 10 hereof, Respondent Howell did discriminate and is now discriminating in regard to the hire and tenure and conditions of employment of its employees to discourage membership in Lodge 727, and did thereby engage in, and is now engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

15. By the acts and conduct set forth and described in paragraph 11 hereof, Respondent Howell did thereby engage in, and is now engaging in,

unfair labor practices within the meaning of Section 8 (a) (4) of the Act.

16. The acts and conduct of Respondent Howell, as set forth and described in paragraphs 8 through 11 hereof, occurring in connection with the business of Respondent Howell, as described above, have a close, intimate and substantial relation to commerce, as defined in Section 2 (6) of the Act, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce as defined in Section 2 (7) of the Act.

17. The acts and conduct of Respondent Howell, set forth and described in paragraphs 8 through 11 hereof, occurring in connection with the business of Respondent Howell, as described above, constitute unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1), 8 (a) (3), 8 (a) (4), 8 (a) (b), and Sections 2 (6) and 2 (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twenty-First Region this 15th day of September, 1950, issues this Complaint against Respondent herein.

[N.L.R.B. Seal.]

/s/ HOWARD F. LeBARON,
Regional Director National Labor Relations Board,
Twenty-First Region.

[Admitted in evidence October 31, 1950, as General Counsel's Exhibit No. 1-I.]

[Title of Board and Cause.]

ANSWER

Comes now Howell Chevrolet Company, respondent in the above-entitled matter, and for answer to the complaint filed herein, admits, denies and alleges as follows:

I.

Respondent denies generally and specifically all allegations contained in paragraphs 2, 4, 7, 8, 9 (a), 9 (b), 9 (c), 10, 11, 12, 13, 14, 15, 16 and 17.

II.

Respondent is without knowledge sufficient to answer the allegations of paragraph 3 of the complaint herein and basing its answer upon such lack of knowledge, denies generally and specifically all allegations contained in said paragraph and demands strict proof thereof.

III.

As a statement of fact as required by Section 203.20 of the National Labor Relations Board Rules and Regulations, Series 5, as amended, respondent alleges as follows:

A. That District Lodge No. 727 of the International Association of Machinists never had a majority of respondent's employees in the unit as set forth in paragraph 6 of the complaint herein.

B. That Claude Leonard was not discharged

because of his affiliations with District Lodge 727 of the International Association of Machinists or because he testified as a witness at a formal hearing in National Labor Relations Board Case No. 21-RC-1146. Claude Leonard's discharge was predicated on sound economic reasons and reasons of cause.

Wherefore, respondent prays that the complaint be dismissed and for such other and further relief as the Board deems just and reasonable.

CARTER & POTRUCH,

By /s/ **FREDERICK A. POTRUCH,**
/s/ **JAMES M. NICOSON,**

Attorneys for

Howell Chevrolet Company.

Duly verified.

Affidavit of Service by Mail attached.

[Admitted in evidence October 31, 1950, as General Counsel's Exhibit No. 1-K.]

[Title of Board and Cause.]

AMENDMENT TO COMPLAINT

Please Take Notice that the Complaint in the above-entitled matter, issued on September 15, 1950, is hereby amended as follows:

1. Add paragraph 10(a) to Complaint--

“10(a). Respondent Howell, by its officers, agents, and supervisory employees during the

period from February 1, 1950, to March 31, 1950, refused to assign Claude Leonard to his regularly scheduled work because of his activities on behalf of and his membership in Lodge 727."

2. Amend paragraph 14 by adding—
"and paragraph 10(a)" following the words
"paragraph 10" in the second line.

Dated at Los Angeles, California, this 16th day of October, 1950.

/s/ HOWARD F. LeBARON,
Regional Director National Labor Relations Board,
Twenty-First Region.

[N.L.R.B. Seal.]

[Admitted in evidence October 31, 1950, as General Counsel's Exhibit No. 1-L.]

[Title of Board and Cause.]

ANSWER TO AMENDMENT TO COMPLAINT

Comes now the respondent herein, Howell Chevrolet Company, and for answer to the amendment to the Complaint denies generally and specifically all allegations therein contained.

/s/ JAMES M. NICOSON,
Attorney for
Howell Chevrolet Company.

[Admitted in evidence October 31, 1950, as General Counsel's Exhibit No. 1-N.]

[Title of Board and Cause.]

**INTERMEDIATE REPORT AND
RECOMMENDED ORDER****Statement of the Case**

Upon a petition duly filed on January 31, 1950,¹ by International Association of Machinists, District Lodge No. 727, herein called the Union, the National Labor Relations Board, herein called the Board, held a hearing on March 15, to determine whether the employees of Howell Chevrolet Company, Glendale, California, herein called the Respondent, desired to be represented by the Union for the purposes of collective bargaining. Thereafter and on May 5, the Board issued an order² directing that an election be conducted among the Respondent's employees in a certain appropriate unit under the auspices of the Regional Director for the Twenty-First Region (Los Angeles, California).

On June 1, the said election was held and the Union lost the election.³ The Union, on June 7, filed objections to the conduct of the election, and on August 9, the then Acting Regional Director for the Twenty-First Region issued his report on the objections finding that the aforesaid objections

¹Unless otherwise noted all events referred to herein occurred in 1950.


²89 NLRB No. 142.

³Of the 26 valid votes cast, 11 were cast for the Union, 13 against, and 2 were challenged.

raised substantial and material issues and recommended that a hearing be held to resolve said issues. No exceptions were filed by any of the parties to the said Acting Regional Director's recommendations. The Board, by order dated August 29, adopted the aforesaid recommendations and ordered a hearing to be held for the purpose of resolving the issues raised by the Union's objections.

Upon a charge and an amended charge duly filed on June 6 and July 26, respectively, by the Union, the General Counsel of the Board, herein called the General Counsel, issued his complaint on September 15, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce, within the meaning of Section 8 (a) (1), (3), (4), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the complaint, charge, amended charge, Union's objections to the selection, the Acting Regional Director's report with respect thereto, the Board's order directing a hearing on the said objections, together with notice of hearing on the complaint and on the objections, were duly served upon the Respondent and upon the Union.

With respect to the unfair labor practices, the complaint alleged, in substance, that the Respondent (1) discharged Claude Leonard on or about March 31, and thereafter refused to reinstate him because of his membership and activities in behalf



of the Union and because he testified as a witness at a formal hearing in the Matter of Howell Chevrolet Company and International Association of Machinists, District Lodge No. 727⁴; (2) since on or about January 31, refused to bargain collectively with the Union although the Union previously had been designated and selected the collective bargaining representative by the Respondent's employees in a certain appropriate unit as such representative; and (3) engaged in certain stated conduct and made various statements which interfered with, coerced, and restrained its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On September 22, the Respondent duly filed an answer denying the commission of the alleged unfair labor practices. On October 30, the Respondent duly filed an "Answer to the Amendment to Complaint."

Pursuant to notice, a hearing was held from October 31 to November 3, both dates inclusive, at Los Angeles, California, before the undersigned, Howard Myers, the duly designated Trial Examiner. The Respondent and the General Counsel were represented by counsel; the Union by representatives thereof. All parties participated in the hear-

⁴On October 6, the General Counsel served upon the Union and upon the Respondent "Amendment to Complaint" wherein he alleged that Leonard was discriminatorily refused his regularly scheduled work during February and March, 1950.

ing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues.

At the conclusion of the General Counsel's case in-chief, the Respondent's motions to dismiss the complaint in its entirety or, in the alternative, to dismiss certain stated portions thereof, were denied. At the conclusion of the taking of the evidence, the General Counsel moved to conform the pleadings to the proof with respect to minor variances, but not to include any new unfair law practices, was granted without objection. Counsel for the Respondent then renewed his motions to dismiss the complaint. Decision thereon was reserved. The motions are hereby denied. The parties were then informed that they might file briefs or proposed findings of fact and conclusions of law, or both, with the undersigned on or before November 18.⁵ Briefs have been received from the Respondent and from the General Counsel which have been carefully considered by the undersigned.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

1. The business of the Respondent

Howell Chevrolet Company, a California corporation, is engaged in, and at all times material herein

⁵Subsequently the time was extended to December 6.

has been engaged in, the operation of an automobile agency dealership and automobile repair and service shop in Glendale, California, for the service, sale, and distribution of new Chevrolet automobiles, trucks, accessories, and parts under an exclusive franchise or dealer's agreement with the Chevrolet Motor Division—General Motors Corporation. The Respondent also operates a used car lot which is located across the street from its main showroom and service station.

During 1949, the Respondent purchased from the Chevrolet Motor Division—General Motors Corporation—new Chevrolet automobiles and trucks valued at \$960,797.97 and parts and accessories valued at \$129,145.01. In addition, during 1949, the Respondent purchased from sources other than Chevrolet Motor Division—General Motors Corporation—parts and accessories valued at \$36,240.35. During the same year, the Respondent's sales of new Chevrolet cars and trucks amounted to \$1,246,812.59 and sold parts and accessories valued at \$256,850.62.

The Chevrolet Division—General Motors Corporation—maintains a new car and truck assembly plant at Van Nuys, California, from which the Respondent obtains its new cars and trucks.

For the fiscal year ending September 30, 1950, motor vehicle production parts, parts and accessories valued in excess of \$5,000,000 were shipped to the said Van Nuys plant, of which amount approximately 43 per cent were shipped from points

located outside the State of California. During the aforesaid fiscal year, the Respondent's purchases from Chevrolet Motor Division—General Motors Corporation—amounted to more than \$1,500,000 but were less than \$2,000,000.

All the Respondent's sales of automobiles, both new and used, parts, and accessories, are made either locally or within the State of California.

Counsel for the Respondent contended at the hearing, and in their brief, that the complaint should be dismissed because, among other reasons, the Respondent is not engaged in commerce within the meaning of the Act, and even if it were so engaged, the Board nonetheless should not assert its jurisdiction because of the local character of the Respondent's business. For the reasons set forth by the Board in the Baxter Bros. case, 91 NLRB No. 233, the undersigned finds the contention to be without merit.⁶ Upon the basis of the entire record, the undersigned finds that during all times material herein the Respondent was, and now is, subject to the Board's jurisdiction and that it will effectuate the policies of the Act for the Board to assert its jurisdiction.

II. The organization involved

International Association of Machinists, District Lodge No. 727 is a labor organization admitting to membership employees of the Respondent.

⁶See also NLRB v. M. L. Townsend (C.A. 9), 26 LRMM 2561.

III. The unfair labor practices**A. The refusal to bargain collectively
with the Union****1. The appropriate unit**

The complaint alleged, as the Board found in its Decision and Direction of Election, dated May 5, 1950,⁷ that all employees of the Respondent at its establishment in Glendale, California, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the Act, constituted a unit appropriate for the purposes of collective bargaining.⁸ In its answer the Respondent neither denied nor admitted that such unit was appropriate. Under the circumstances, the undersigned finds that all employees of the Respondent at its establishment in Glendale, California, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the Act, at all times material herein constituted, and now constitute, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that the said unit insures to the Respondent's em-

⁷89 NLRB No. 142.

⁸In the representation case the Board rejected the Respondent's contention that the appropriate unit should consist only of employees who are supervised by its service manager.

ployees the full benefit of their right to self-organization and collective bargaining and otherwise effectuates the policies of the Act.

2. The majority status of the Union
in the appropriate unit

At the hearing herein, there was introduced in evidence by the General Counsel a list prepared by the Respondent containing the names of all the Respondent's employees in the unit hereinabove found appropriate. The list shows that on February 1,⁹ the Respondent had in its employ 28 persons in the said unit.¹⁰ On behalf of the General Counsel there were offered and received in evidence 20 signed cards expressly authorizing the Union to represent the signers for collective bargaining. The genuineness of the signatures on the cards was in some instances proved directly by the testimony of the signers and in some instances by witnesses to the signatures. The authenticity of the signatures appearing on the cards was not challenged.

⁹It was stipulated by counsel that the persons whose names appeared on this list were also in the Respondent's employ on January 31.

¹⁰The list also contains the name of Frank Ogen. This person, the record clearly shows, and the undersigned finds, was, at all times material herein, a supervisor within the meaning of the Act and hence is excluded from the unit. The General Counsel's contention that Fred Bordeau should be excluded from the unit on the sole ground that he is the son of the Respondent's service manager is without merit. The undersigned includes Fred Bordeau in the unit.

The undersigned has compared the names appearing on the aforesaid cards with the list submitted by the Respondent and received in evidence and finds that as of January 31, 1950, 14 employees in the appropriate unit had signed cards designating the Union as their collective bargaining representative.¹¹ Claude Leonard testified without contradiction that he joined the Union on or about January 23. On January 30, Leonard attended a meeting of the Union and there he was elected senior chairman or shop steward by his co-workers who attended the meeting. The undersigned accordingly finds that on January 31, 1950, and at all times thereafter, the Union was the duly designated collective bargaining representative of the Respondent's employees in the unit found appropriate. Pursuant to Section 9 (a) of the Act, the Union was, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

As found above Claude Leonard joined the Union about January 23. At a meeting held at the Union Hall on the evening of January 30, 6 employees of the Respondent signed cards designating the Union their collective bargaining representative. They also

¹¹One of these 14 employees signed a card on January 28, 6 signed on January 30, and 7 signed on January 31.

selected or elected Leonard senior chairman or shop steward.

The following morning, January 31, the 8 employees who attended the Union meeting appeared at work wearing Union buttons; Leonard's button bore the inscription "Senior Chairman." Prior to the commencement of work that day Leonard secured the signatures of four additional employees to authorization cards. Three other employees signed authorization cards sometime during that day.

Under date of January 31, after 15 of the 28 employees in the appropriate unit had either joined the Union or had designated the Union their collective bargaining representative, the Union wrote the Respondent that it had been designated the collective bargaining representative by a majority of the Respondent's employees and requested recognition. The letter concluded with a request that the Respondent fix a convenient time for a conference to discuss a collective bargaining agreement. The Respondent admittedly received the letter on February 1, and admittedly did not answer it.

On January 31, the Union filed with the Board a representation petition.

The Respondent's immediate reaction to the employees' activities on behalf of the Union was to embark upon a campaign to destroy the Union's majority by demonstrating to its employees the futility of becoming, or remaining, members thereof. Thus, according to the undenied and credible testi-

mony of Leonard he had a conversation with Body-Shop Foreman Frank Ogen sometime about a week or so after January 31, wherein the following ensued:

Well, I was out there in the body shop one day at noon; and he (Ogen) told me to get away from him with that button on. He didn't want to get fired. So I told him there wasn't anybody going to get fired over the buttons. He said that Mr. Howell (Jackson Howell, the Respondent's president) told him he was going to fire anyone that joined the union.¹²

George A. Kirkland, who was formerly employed by the Respondent as a mechanic for approximately 5 years prior to October, 1950, and presently self-employed, testified that sometime during the first week in February, he and Leonard asked Ogen where Ogen "got his information that all the em-

¹²Ogen did not testify. Howell denied that he made the statement Ogen attributed to him. Howell's denial does not, and can not, negate the violative tenor of Ogen's remarks or their coercive effect. Respondent's counsel contended in their brief, for the first time, that Frank Ogen was not in fact a supervisory employee, and that, consequently, the Respondent could not be held accountable for the latter's conduct and statements. The record fails utterly to support this contention. On the contrary, Howell admitted that Ogen was the body-shop foreman in February and March, 1950. The record, moreover, clearly shows that the employees regarded Ogen as foreman of the body shop and took orders from him. The fact that Bordeau was general service manager during that time did not alter Ogen's status nor his powers.

ployees that joined the union were going to be fired" and that Ogen replied that he had received the information from Howell the previous night.

Former employee George A. Smith testified, and the undersigned finds, that Ogen asked him several times prior to the Board-conducted election of June 1, what he "was going to do about the union" and whether he "was in the Union"; that on one occasion before the said election, Ogen asked him if George Kirkland had induced him to join the Union; and that on another occasion, prior to the election, Ogen told him that "any man that joined the union would be fired," adding, to quote Smith, "He never did work in a union shop; he never would. He wouldn't have any union men working for him."

Paul Arnold, a former employee of the Respondent, testified credibly that a day or two after January 31, he asked

him [Ogen] what he thought about the guys going in [the Union], and he said they had better watch out for their jobs, because Howell said to fire them all that are wearing buttons.

Arnold further testified that a few days after the above related conversation he voluntarily left the Respondent's employ.

In the latter part of March or in the early part of April, all the shop employees were assembled by the Respondent. Howell opened the meeting, introduced Frederick A. Potruch, Esq., as the Respondent's counsel, and then told the assembled em-

ployees that Potruch would outline to them the Respondent's labor relations policies.

Regarding what he told the employees, Potruch testified, in part as follows:

I told them that the Company would test the jurisdiction of the National Labor Relations Board. I told them that it had been done on other occasions; that they were probably aware of that and had been told so by the union.

* * *

* * * that I felt that if there was anything to be done by the company and the union that they were big enough to do it for themselves without having anyone step in and tell them what to do and not what to do as put in the Act, and I have named the Act, the Taft Hartley Act * * *

After I presented that to them I went into the ramifications of how the jurisdiction of the Board could be decided. I told them that this was a representation proceeding, that the union was asking that they represent the men to bargain collectively, and that it was at these proceedings that we would deny the jurisdiction of the Board; that there would be a formal hearing, that we would have to run through the gamut of a formal hearing; and I told them that we would still stick to our guns on the question of jurisdiction at all times, just as we have done in these proceedings. And I told them the only way we could get an adequate test on the question of jurisdiction, if it was

to go that far, would be to go into the Circuit Court of Appeals as had been done in the Townsend case;

* * *

It might even necessitate—that for any company not necessary Howell, to get a case into the United States Circuit Court of Appeals, it might be necessary to do something to be cited for an unfair act under the National Labor Relations Act that someone might have to be discharged, either on a friendly basis or even deliberately and then the charge brought * * *

* * *

And then we would have a hearing on it as we are now having * * *

* * *

I also told them that it was possible for a company * * * that during this period in which there was either a friendly unfair labor charge or an unfair labor act or even a deliberate one * * * that it is possible to have what is known as an unfair labor strike * * *

Potruch also told the assembled employees that he would fight the case to Howell's last dollar.

Kirkland testified that Potruch stated at this meeting that the employees did not need a union inasmuch as it was a small establishment; that the employees would never get a union contract from Howell; that the employees would have to go out on strike to obtain a contract; and that the Respondent would not make any change in wages or other

working conditions unless the Respondent consulted the Union, adding "by God the company wouldn't do that." Other witnesses called by the General Counsel corroborated, in the main, Kirkland's version of what Potruch said at the aforesaid meeting.

Potruch denied making the statements to the effect that the Respondent would not sign an agreement with the Union which statements were attributed to him by Kirkland and others. The undersigned rejects Potruch's denials and finds, on the other hand, that he made the said statements. The entire purport of Potruch's remarks, even on the basis of his version, as reflected by his testimony, was to impress upon the employees that it was futile for them to become, or remain, members of the Union because the Respondent would not bargain with the Union or recognize it as the collective bargaining representative of the employees. The fact that Potruch told the employees that, even if the Union won the election, the Respondent would not bargain with the Union is implicit in the following question propounded under cross-examination, to former employee Lee Fitzhugh by the Respondent's counsel:

Don't you remember him [Potruch] saying that the way that they would get the question to the test of the court would be—and the only way—that the company would have to refuse to bargain? That way they could get themselves before the court for review of the question of jurisdiction?

Fitzhugh replied to the above-quoted question, "I

believe he said something to that effect, sir. "A similar question was propounded by counsel for the Respondent to Kirkland and he answered, "Yes."

Each and every phrase of Potruch's address was designed to impress upon the employees that continued union affiliation was a fruitless gesture and that they could rely upon the Respondent's unilateral generosity to attain their economic ends. This finding is buttressed by Potruch's statement, made during the course of the meeting, "if I was an employee that I would go to the employer, state my problems to him and see what I could work out with him; and if the employer, to quote, was 'a son-of-a-bitch,' and wouldn't do anything for me I would go out and hang him. * * *" This finding is also supported by Potruch's repeated statements that he would fight the matter through all the courts in the land.

The most reprehensible portion of Potruch's remarks was his statement that the Respondent would not hesitate to discharge an employee for union activities in order to bring the matter before the courts.¹³

In a recent case ¹⁴, the Board held that a publicized intention under circumstances similar to those in the instant case, to contest matters through the courts was in itself a proscribed act. In that case the Board said:

¹³Leonard, as found below, was, in fact, discriminatorily discharged.

¹⁴Metropolitan Life Insurance Company, 90 NLRB No. 129.

We agree with the Regional Director's finding that the employer's announcement that it would not bargain with U.O.P.W.A. was reasonably calculated to impress upon the employee the futility of voting for U.O.P.W.A. They were haunted with the prospect, if U.O.P.W.A. were certified, of having no collective bargaining relationship with the employer for several years pending a final judicial determination of U.O.P.W.A. status. In our opinion this prospect tended to defer the agents from exercising a free choice in the selection of a bargaining representative. . . . Accordingly, we shall overrule the exceptions of the employer and shall order all six elections set aside.

About 2 weeks prior to the Board-conducted election, Potruch again visited the plant and held meetings with small groups of employees in Bordeau's private office. There were 5 such meetings. At each of these meetings, Potruch first instructed the employees how to mark their ballot at the forthcoming Board election. He then said that he intended to sue the Union for libel and would tie up every Union bank account in the United States. He further stated that the Union had used gangsters with respect to organizing other automobile dealers and that if the Union wanted to play rough he would play rough also.

The Respondent's counsel contended in their brief that Potruch's statements to the employees were protected by Section 8 (c) of the Act. Insofar as presently relevant, that section provides that "The

expressing of any views, arguments, or opinion . . . shall not . . . be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit." The legislative history of the Act in silhouette against the contemporary background, clearly indicates that the objective of Section 8 (c) was to preclude an inference of unfair conduct from an unconnected statement of attitude alone. It was not designed to preclude, as here, consideration of connected, immediate relevant utterances.

Viewed in this light, Potruch's remarks at each meeting with the employees were violative of the Act.

Assuming, arguendo, that Potruch's remarks to the employees did not in themselves contain any such threat of reprisal or force or promise of benefit, that fact, standing alone, would not bring the remarks within the purview of Section 8 (c) for, as the legislative history of the Act shows, the Congress did not intend that the threats and promises of benefit which remove expressions of views and opinions from the protection of that section must necessarily appear in the context of such statement. It was not, moreover, the intention of the Congress to preclude a consideration of threats or promises of benefits where, as here, they are implicitly and inextricably a part of the conduct in question.¹⁵

¹⁵Sec 93 Cong. Rec. 4261, 3950, 6601, 6603, 6604-5, 6673, 7002; Sen. Rep. No. 103, 80th Cong., 1st Sess., p. 23, 45; House Rep. No. 245, 80th Cong., 1st Sess., pp. 43, 45; House Rep. No. 245, 80th Cong., 1st Sess., p. 33.

Former employee Boyce Skelton testified that about 2 weeks before the Board-conducted election, Howell told him, during the course of a conversation he had with Howell, "if the union was defeated, why, everybody would get a raise."

Former employee William F. Hansen testified that a few days prior to the aforesaid election Howell came to the place where he worked and said to him, among other things, to "vote in favor of the plant" at the forthcoming election and that he replied, "I will do my best."

George A. Smith, a former employee, testified that several days before the aforesaid election, Howell came up to where he was working and engaged him in a conversation, during which Howell stated, to quote Smith, "he didn't want the National Labor Board in there to tell him how to run his business." Smith further testified that during the said conversation Howell also said that if the Union was defeated at the election the Respondent would raise the mechanics' commissions from 40 to 50 per cent.

Howell denied making the statements attributed to him by Skelton, Hansen, and Smith. The three last named impressed the undersigned as honest and forthright witnesses. Howell did not so impress the undersigned. It was very evident to the undersigned, from Howell's demeanor on the witness stand, that Howell was withholding the true facts. Under the circumstances, the undersigned finds that Howell made the statements attributed to him by

Skelton, Hansen, and Smith. As a matter of fact, within a few days after the election, Howell announced, at a banquet given the employees by the Respondent, a general wage increase which included a raise in commissions for mechanics to 50 per cent.

Skelton testified credibly and without contradiction that about a week or two before the election, Service Manager Bordeau said to him and a group of about 3 to 5 other employees, during the course of a conversation, "if the union was defeated that everyone would get a raise."

Smith testified that about 2 weeks before the election he heard Bordeau tell Employee Kenneth Herrick, "if the union went in Howell would shut his doors."

With respect to his conversation with Herrick, Bordeau testified that one evening while he was in a bar and grill near the plant, the following ensued:

Well, I was in there first. He [Herrick] came in and sat down beside me, and he said, "Chub, what about this union? What are we going to do about this union deal?" And I said, "Well, Kenny, there is nothing to do about it but use your head. You do whatever you see fit, whatever you think is best for you."

Herrick's testimony on this point, on direct examination by Respondent's counsel, is as follows:

Q. Now, there has been some testimony, Mr. Herrick, about an occasion in a place called the Playhouse Bar and Grill in our fair city of

Glendale, at which time Mr. Bordeau was there, you were there, and a fellow by the name of Mr. George Smith was there.

Do you remember that occasion?

A. Not exactly that one occasion. It might have been a couple of different times.

Q. All right. Do you remember speaking to Mr. Bordeau in a bar about the union?

A. Well, I wouldn't say that we spoke about the union—I mean, it may have been brought up—but not especially.

Q. Do you recall such a conversation?

A. Not exactly, no.

Q. Do you recall ever saying anything to Mr. Bordeau in a bar about a union?

A. No. The only thing, if anything was ever said, was that we would have—we were privileged to vote any way we wanted.

Q. You remember something like that did occur?

A. It could have, yes, sir.

Q. You recall who were present besides you and Mr. Bordeau?

A. I do not; there were sometimes maybe four or five or six or seven of the boys who happened to stop there after work.

Q. What did you say to Mr. Bordeau and what did he say to you?

A. That I do not remember.

Q. You do not recall the substance of any of the conversations on these occasions?

A. Definitely not.

Q. I will ask you for the purpose of refreshing your recollection if you did not ask Mr. Bordeau what to do about the union question—that, or that in substance. Now, just answer that question yes or no.

A. Well now, I do not think I would ask anybody what to do about the union because that is my own privilege.

Q. Mr. George Smith has testified that on occasions in the Playhouse Bar, at which you were present, Mr. Bordeau was present and Mr. Smith was present, that Mr. Bordeau said to you that if the union organized the Howell shop, that Mr. Howell would close it down. Did any such conversation ever take place?

A. I do not believe it did.

Upon the entire record in the case, the undersigned is of the opinion, and finds, that Smith's version of the Bordeau-Herrick conversation to be substantially in accord with the facts.

Potruch testified that sometime between February 8 and 14, at an informal conference held at the Board's Regional offices at which was present, besides himself, one or two Field Examiners of the Board and one or more Union representatives, he stated that he did not believe that the Union represented the majority of the Respondent's employees in the appropriate unit. He also testified that the Union did not then, nor since, show him, the Respondent, or any other representative of the Respondent, any evidence of its majority status.

Regarding this informal meeting, Edward M. Skagen, a Grand Lodge representative of the Union, testified, on direct examination by the General Counsel, as follows:

Q. Mr. Skagen, there has been some testimony here that there was a conference held, an informal conference, held in the National Labor Relations Board's office in the month of February with Mr. Fred Davis, a Board Field Examiner, and Mr. Potruch concerning the Howell Chevrolet case. Did you ever attend such a conference? A. Yes, I did.

Q. And when was that?

A. As I recall, it was in the month of February and I believe the exact date would be around February the 6th.

Q. Will you tell us who was present there?

A. Well, there were two Field Examiners from the National Labor Relations Board. One was Mr. James Carr and the other one was Mr. Fred Davis and Mr. Frederick A. Potruch, myself and I am not certain but I believe Tiny Gordon and John Foote were present. I am not sure about the latter two, however.

Q. Will you tell us what took place at that conference?

A. Well, there was a mixup that morning. Mr. James Carr had a case called Standard Coil Company of which Frederick A. Potruch was the attorney, and we went down into Mr.

Davis' office because we thought we could consolidate both cases.

Trial Examiner Myers: Who is "we"?

The Witness: The group of us, Frederick A. Potruch, myself, Mr. Carr. We went down there and found Mr. Davis in his office on the sixth floor of the National Labor Relations Board. The reason I remember it so well is because Mr. Potruch was sitting on the edge of the table and he says, "I am going to surprise you. I am going to consent to an election. We admit that we are in commerce," and the commerce factor had been a big factor in these automotive cases at that time.

Then Mr. Potruch throws his hands up and says, "Da-dee-da-dee-da."

All of us were very surprised. I would say that everybody including the Field Examiner was speechless because he had admitted commerce.

Then I says, "Oh, you are going to admit commerce in the Howell Chevrolet?"

Then we were deflated because he was admitting commerce in the Standard Coil case and he wasn't prepared to discuss, as I remember it, the Howell Chevrolet case at all that day and would not admit to commerce.

Q. (By Mr. Nutter): Will you tell us what was said about the Howell case?

A. I says, "Oh, I thought we were talking about the Howell Chevrolet case."

Frederick A. Potruch, attorney, says, "Now, Eddie, you know that I wouldn't admit to commerce in one of these automobile cases. We are going to have to go to a hearing on that. In fact, I didn't even bring a brief case or any papers over on it."

Then we went ahead and discussed the Standard Oil case and as I remember it we did not discuss the Howell Chevrolet case any more that day.

Q. Was there any other discussion of Howell at all?

A. Not that I remember. In fact, I distinctly remember there not being any further discussion on it.

Q. Did Mr. Potruch say there that he didn't think the union had a majority at the Howell Company?

A. No, he did not.

The testimony of Delmar A. Gordon, an organizer for the Union, is in substantial accord with that of Skagen. Gordon also testified that Potruch stated at the above-referred-to meeting that Potruch stated that (1) he had no papers with him at that time regarding the Respondent's matter; (2) he had never met Howell; and he did not "know what kind of business [Howell] is in, whether [Howell] sells new or used cars."

Skagen and Gordon each denied that Potruch made any mention of the Union's majority status or lack of majority status.

The undersigned was favorably impressed by the

sincere and straightforward manner with which both Skagen and Gordon testified. On the other hand, Potruch did not so impress the undersigned. The undersigned is firmly convinced that at no time prior to the election, did the Respondent, Potruch, or any one on behalf of the Respondent, ever entertain a doubt that the Union represented the majority of the Respondent's employees in the appropriate unit. Potruch's testimony that he had stated at the informal conference at the Board's offices that he doubted the Union's majority status is an afterthought and is belied by the credible evidence in the record. Throughout the whole period involved herein, Potruch took the adamant position that the Respondent was not engaged in commerce within the meaning of the Act, and he proceeded to defend his client's position along that line. It is significant to note that Potruch did not testify that he ever demanded, at the informal meeting or at any other time, proof of the Union's majority status.

Under the circumstances, the undersigned finds that Skagen's and Gordon's versions of what transpired at the informal conference at the Board's offices in February to be substantially in accord with the facts.

Upon the basis of the credible evidence in the case, as epitomized above, the undersigned concludes and finds that on and since January 31, 1950, the Respondent has refused to bargain collectively with the Union as the statutory representative of the

Respondent's employees in the unit found appropriate with respect to rates of pay, wages, hours of employment, and other conditions of employment, and by such refusal interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, thereby violating Section 8 (a) (5) and (1) thereof.

The undersigned further finds that the Respondent violated Section 8 (a) (1) by Howell's statements to Skelton, Hansen, and Smith; (2) Bordeaux's statements to Skelton and Herriak; (3) by Potruch's remarks during his two speeches to the employees; and (4) by Ogen's statements to Leonard, Kirkland, Smith and Arnold.

Upon the basis of the above findings, the undersigned concludes and finds, that the Respondent interfered with the conduct of the Board-conducted election of June 1, 1950, thereby depriving the employees of the freedom of choice of representatives contemplated by the Act. Accordingly, the undersigned recommends that the said election be set aside and vacated.

**B. The discriminatory discharge
of Claude Leonard**

Leonard has been an experienced all around mechanic for the past 25 years. Most of his time during this period was spent largely in repair and service of Chevrolet automobiles. He is a certified and approved Chevrolet mechanic. For 9 consecutive years he has received the General Motors diploma for having successfully completed courses of

instruction in Chevrolet mechanics and repair.¹⁶

His experience during the past 25 years included front end work, the overhauling and repair of motors, transmissions, and rear ends, grinding valves, and other types of mechanical work performed in a general garage. For a period of 3 years he operated his own repair shop in St. Louis, Missouri.

Leonard was first employed by the Respondent in 1944, as a line mechanic. His duties as such required him to overhaul motors and transmissions, rear end work, reline and adjust brakes, and to perform front end work. After a little more than a year of service with the Respondent, the latter's then service manager opened his own repair shop and Leonard went to work for him as a general mechanic.

After remaining in the employ of Howell's former service manager for a little over 2 years, Leonard secured employment with another Chevrolet dealer, where he remained for about a year.

Leonard was re-employed by the Respondent in January, 1948, as a brake repair man. His duties as such required him to reline and adjust brakes, overhaul and repair wheel and master cylinders, and make other repairs on the brake system. Occasionally, during a busy period, he was requested and did, other types of mechanical work. For example, when the front end man was on vacation for 2 weeks in August, 1949, Leonard performed front end work in addition to his regular duties. Also when the

¹⁶His latest diploma was secured in 1950, while in the Respondent's employ.

front end man was absent during 1949, on account of sickness, Leonard performed his work as well as his own.

As found above, Leonard joined the Union on January 23, was elected or selected by his co-workers senior chairman or shop steward on January 30, and was the leader and spearhead of the Union's organizational drive in the Respondent's establishment. Leonard openly solicited, and obtained many new adherents to the Union from among the Respondent's employees.

On January 31, Leonard wore his senior chairman button to work and admittedly the Respondent's officials saw the button on him that day.

About a week after Leonard commenced wearing his said button in the shop, Ogen warned him, to quote Leonard's testimony "to get away from him with that button on" because "he did not want to get fired" because Howell had said, that Howell "was going to fire anybody that joined the Union."

During the first week in February, Ogen informed Leonard and Kirkland, who also wore a union membership button, that Howell said that he intended to discharge all members of the Union.

Despite these warnings of Ogen's and Bordeau's admonition in the latter part of February that Leonard should cease campaigning for the Union in the shop or resign his job, Leonard continued his leadership in the Union and continued to wear his button in the shop.

While Leonard was in Respondent's employ mechanics, such as he, received no guaranteed wage.

Their earnings were computed on a straight 40 per cent commission basis¹⁷ for labor performed for each customer. When a mechanic had no work to perform he received no compensation of any sort.

For a month or so prior to January 31¹⁸, Leonard's semi-weekly net earnings¹⁹ amounted to approximately \$150.

On January 15, Leonard received \$149.96 net for work performed during the two-week period ending that date. On January 31, his net earnings were \$150.88. For the two-week period ending February 15, he received \$98.27 net. For the two-week period ending February 28, he received \$45.52 net. For the two-week period ending March 15, he received \$69.30 net. Leonard's final pay check, which he received on March 31, amounted to \$87.82.

Commencing early in February and continuing until his discharge on March 31, Leonard and two of his co-workers, Kirkland and Fitzhugh, noted that brake adjustment work and the bleeding of the brake system, work which normally in the past had been assigned to Leonard, was being performed, upon instructions of Bordeau, by the men who worked on the lubrication rack, one of whom was Bordeau's son.

¹⁷Within a few days after the Board election the commission was raised to 50 per cent.

¹⁸The documentary evidence does not disclose any earnings of Leonard prior to January 1, 1950.

¹⁹After deductions had been made for withholding tax, social security, and the like.

On March 15, Leonard testified on behalf of the Union at the hearing in the aforementioned representation proceeding.

On March 31, Leonard worked overtime, and as he turned in his work ticket and prepared to leave the shop Bordeau approached and informed him that he was discharged. Upon asking why he was discharged, Bordeau replied that there was not enough work for the brake man and the front end man to each make a living so the Respondent decided to combine the brake and front end jobs and retain in its employ the front end man. When Leonard protested the Respondent's action of retaining Kenneth Herrick, the front end man, instead of him, stating, among other things, that he had more seniority than Herrick and could efficiently perform front end work, Bordeau replied, to quote Leonard, "Well, that is the way it is to be and he could do nothing further about it."

Admittedly, Leonard was not discharged for inefficiency. The Respondent's answer averred that Leonard's "discharge was predicated on sound economic reasons and reasons of cause." Howell and Bordeau each admitted that Leonard was discharged solely for lack of work.

Bordeau also admitted that since Leonard's discharge, Herrick's earnings have nearly doubled. In fact, three or four times, Herrick had to call upon outside help to aid him.

Bordeau testified he did not recall Leonard to help Herrick, instead of allowing Herrick to ob-

tain outside help, because he did not know where to reach Leonard. This reason does not ring true because Leonard visited the Respondent's establishment on several occasions between March 31 and June 1, on which latter date Howell ordered Leonard off the Respondent's premises. Furthermore, Herrick needed, and obtained, outside help prior to June 1.

Bordeau's testimony, moreover, that he considered Leonard's refusal, "sometime in 1949," to do certain front end and alignment work when he requested Leonard to do so, as evidence that Leonard would not be interested in the combined brake and front end job, and hence he did not consider Leonard for the job or did not think him capable of performing the combined job properly, is patently untrue. The record discloses that when Bordeau requested Leonard to do the front end and alignment work, Leonard was actually working on another job and hence was unable to undertake the proffered job.

Upon the entire record in the case, the undersigned concludes and finds that Leonard was discharged on March 31, 1950, in violation of Section 8 (a) (3) and (4) of the Act because of his membership and activities in behalf of the Union and because he gave testimony on March 15, 1950, in a formal hearing before the Board. Viewed against the anti-Union background of the Respondent, as found above, coupled with Potruch's statements that, if necessary, the Respondent would discharge

a Union adherent in order to bring the entire matter before the courts, Leonard's discharge, coming as it did, becomes more than a mere coincidence. Furthermore, it was incumbent upon the Respondent to produce its records, or other reliable evidence, in place and stead of the mere statements of Howell and Bordeau to prove that Leonard's discharge was necessitated by economic reasons. This is especially so since Bordeau admitted that subsequent to Leonard's discharge Herrick's earnings almost doubled, that at times Herrick needed additional help, and that the Respondent was then having "a busy season."

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in unfair labor practices, violating Section 8 (a), (1), (3), (4) and (5) of the Act, it will be recommended

that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has discriminated in regard to the hire and tenure of employment, and the terms and conditions of employment, of Claude Leonard the undersigned will recommend that the Respondent offer to Leonard immediate and full reinstatement to his former or substantially equivalent position²⁰, without prejudice to his seniority and other rights and privileges. The undersigned will also recommend that the Respondent make Leonard whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him, by payment to him of a sum of money equal to the amount he would have normally earned as wages from March 31, 1950, to the date of the Respondent's offer of reinstatement, less his net earnings during that period.²¹ Loss of pay shall be paid in accordance with the formula enunciated by the Board in *F. W. Woolworth*, 90 NLRB No. 41.

Having found that the Respondent has refused to bargain collectively with the Union as the representative of the majority of the employees in an appropriate unit, the undersigned will recommend that the Respondent, upon request, bargain collectively with the Union as the exclusive statutory rep-

²⁰See *The Chase National Bank of the City of New York*; etc., 65 NLRB 827.

²¹See *Crossett Lumber Co.*, 8 NLRB 440.

representative of all the employees in the unit herein found appropriate.

The scope of the Respondent's illegal conduct discloses a purpose to defeat self-organization among its employees. It sought to coerce them in the exercise of the rights guaranteed them by the Act by, among other things, refusing to bargain collectively with the statutory representative of its employees and by discriminatorily discharging Claude Leonard because of his Union affiliations and because he gave testimony in a formal hearing before the Board. Such conduct which is specifically violative of Section 8 (a) (1), (4), and (5) of the Act, reflects a determination generally to interfere with, coerce, and restrain its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and presents a ready and effective means of destroying self-organization among its employees. Because of the Respondent's unlawful conduct and since there appears to be an underlying attitude of opposition on the part of the Respondent to the purposes of the Act to protect the rights of employees generally,²² the undersigned is convinced that if the Respondent is not restrained from committing such conduct, the danger of their commission in the fu-

²²See *May Department Stores Company, etc., v. NLRB*, 326 U. S. 376.

ture is to be anticipated from the Respondent's past conduct, and the policies of the Act will be defeated. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies, the undersigned will recommend that the Respondent cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

The undersigned further recommends that the June 1, 1950, election among the Respondent's employees be set aside and vacated.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. International Association of Machinists, District Lodge No. 727, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All the Respondent's employees, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the Act, constitute, and during all times material herein constituted, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. International Association of Machinists, District Lodge No. 727, was on January 31, 1950, and at

all times relevant thereafter has been, the exclusive representative of all the employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on January 31, 1950, and thereafter, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all the employees in the appropriate unit the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (5) of the Act.

5. By the said refusal the Respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8(a) (1) of the Act.

6. By discriminating in regard to the hire and tenure of employment of Claude Leonard, thereby discouraging membership in a labor organization, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (3) of the Act.

7. By discharging and otherwise discriminating against Claude Leonard, because he had given testimony under the Act the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (4) of the Act.

8. By interfering with, restraining, and coercing its employees in the exercise of the rights guaran-

teed in Section 7 of the Act, the Respondent has engaged in, and is engaging in, unfair labor practices, within the meaning of Section 8 (a) (1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that Howell Chevrolet Company, Glendale, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, District Lodge No. 727, or in any other labor organization of its employees by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

(b) Discharging or otherwise discriminating against any employee because he had given testimony under the Act.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organizations, to join or assist the International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively

through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from the exercise of such rights.

(d) Refusing, upon request, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of its employees in the above-described appropriate unit.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act.

(a) Upon request, bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all the employees in the above-described appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Claude Leonard immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights or privileges.

(c) Make whole Claude Leonard for any loss of pay he may have suffered by reason of the Respondent's discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages from March 31, 1950, to the date of the Respondent's offer of reinstatement, less his net earnings during that period.

(d) Post in its plant at Glendale, California, copies of the notice attached hereto and marked Appendix A. Copies of said notice to be furnished by the Regional Director for its Twenty-first Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-first Region, Los Angeles, California, in writing within twenty (20) days from the receipt of this Intermediate Report what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report, the Respondent notifies the said Regional Director in writing that he will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the aforesaid action.

Dated this 19th day of December, 1950.

/s/ HOWARD MYERS,
Trial Examiner.

Appendix A

Notice to All Employees

Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will Offer to Claude Leonard, immediate reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges previously enjoyed, and will make him whole for any loss of pay suffered as a result of the discrimination.

We Will Not discriminate against or dis-

charge any employees for giving testimony under the Act.

We Will Bargain collectively upon request with the above-named Union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our employees, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

All our employees are free to become or remain members of the above-named Union or any other labor organizations. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any labor organization.

**HOWELL CHEVROLET
COMPANY;
(Employer)**

Dated

By
(Representative.) (Title.)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

National Labor Relations Board

**United States of America
Before the National Labor Relations Board**

Case No. 21-CA-794

In the Matter of:

HOWELL CHEVROLET COMPANY,

and

**INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE No. 727.**

Case No. 21-RC-1146

In the Matter of:

HOWELL CHEVROLET COMPANY,

Employer,

and

**INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, DISTRICT LODGE No. 727,
Petitioner.**

DECISION AND ORDER

On December 19, 1950, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto; and finding further that

the Respondent had interfered with an election conducted by the Board among the Respondent's employees and recommending that the election be set aside. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief, and the General Counsel filed a brief in support of the Intermediate Report.

The Board¹ has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the exceptions, modifications, and additions set forth below.²

The Respondent is engaged in the sale and distribution, at Glendale, California, of new Chevrolet motor vehicles, parts, and accessories, under a

¹Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel.

²The Respondent's request for oral argument is hereby denied as the record, the exceptions and the briefs, in our opinion, adequately present the issues and the positions of the parties.

The Respondent, in its exceptions and brief, alleges that the Trial Examiner was biased and prejudiced against it. We have carefully considered the entire record herein, and although, as noted hereinafter, we do not agree with all the Trial Examiner's conclusions, we find that the allegations of bias and prejudice are without merit.

dealer's agreement with Chevrolet Motor Division-General Motors Corporation. The agreement provides for certain controls as to the Respondent's capital requirements, place of business, hours, servicing facilities, personnel, signs, and local area advertising. The Respondent is one of a limited number of dealers selling Chevrolet products, and, by virtue of its contractual relationship with Chevrolet Motor Division-General Motors Corporation, is an integral part of that corporation's national system of distribution.³ Under the foregoing circumstances, and on the basis of the entire record, we find, as did the Trial Examiner, that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent.⁴

2. The Trial Examiner found, and we agree, that the Respondent violated Section 8 (a) (1) of the Act by the following conduct which occurred after the Union had requested recognition and before the election was held: (1) Body-Shop Foreman

³The Respondent does not, however, as found by the Trial Examiner, have an "exclusive" franchise.

⁴Harbor Chevrolet Company, 93 NLRB No. 231; University Motors, 89 NLRB 1224; Public Motors Co., 90 NLRB No. 273; Avedis Baxter and Ben Baxter, d/b/a Baxter Bros., 91 NLRB No. 233; N.L.R.B. v. Townsend, 185 F. 2d 378, cert. den., 341 U. S. 909.

Ogen's⁵ coercive anti-union statements to employees Leonard, Kirkland, Smith, and Arnold, to the effect that employees who joined the Union would be discharged, and his interrogation of employee Smith about the latter's union membership and activity; (2) President Howell's coercive antiunion statement to employee Hansen⁶ to "vote in favor of the plant," and his promises of benefit to employees

⁵The Respondent alleges, in its brief, that Ogen was not a supervisor within the meaning of the Act. However, at the hearing, President Howell referred to Ogen as the body shop foreman. Furthermore, employee Smith, who did body and fender work, testified that Ogen was his foreman and that Ogen had told him, "He wouldn't have any union man working under him." Employee Arnold also testified that Ogen was his foreman. It is thus clear that Ogen was regarded by both the Respondent and the employees as a supervisor. Moreover, it was clear at the hearing that the General Counsel was seeking to attribute to the Respondent various acts of interference, which we have found violative of Section 8 (a) (1) of the Act, by virtue of Ogen's supervisory status. Yet the Respondent did not contend that Ogen was not a supervisor or come forward with evidence to rebut the testimony indicating that Ogen was a supervisor. In the light of the entire record, we find that Ogen was a supervisor within the meaning of the Act and that his conduct was attributable to the Respondent.

⁶The record shows that among the "other things" referred to by the Trial Examiner which Howell told Hansen before the election was a statement that if Hansen would vote in favor of the Respondent "he [Howell] would see that we got a raise in time." We find this statement also violative of Section 8 (a) (1).

Smith and Skelton to the effect that if the Union were defeated the employees would receive a raise; (3) Service Manager Bordenau's promise to employee Skelton that if the Union were defeated, the employees would receive a raise; and his statement to employee Herrick, also heard by employee Smith, to the effect that if the Union were victorious the Respondent would shut down its operations; (4) Attorney Potruch's address to the Respondent's employees in March or April 1950.⁷ In finding that this speech violated Section 8 (a) (1), we do not rely on Potruch's declarations that the Respondent would contest the jurisdiction of the Board.⁸ Nor do we accept the Trial Examiner's finding that Potruch's remarks to groups of employees about 2 weeks before the election violated Section 8 (a)

⁷In its exceptions and brief, the Respondent alleges that Potruch's statement that "someone might have to be discharged either on a friendly basis or even deliberately" merely referred to one of the means whereby an employer may test the jurisdiction of the Board. However, this did not preclude the clear implication that Howell might resort to the discharge of its employees for this purpose. Moreover, the coercive effect of this statement was not dissipated by Potruch's declaration that employees could not be legally discharged except for economic reasons or for cause.

⁸The effect of this statement on the election and its weight as a defense to a refusal to bargain are discussed separately hereinafter.

(1).⁹ These talks were primarily concerned with explaining the mechanics of marking the ballots in the forthcoming election. Potruch's comments regarding the Union's alleged rough tactics with regard to another employer, and his threats to repay the Union in kind, concerned Potruch's personal retaliation for such tactics and for alleged derogatory remarks about him in a union pamphlet, and did not imply any retaliation directed against the Respondent's employees. Nor do we adopt the Trial Examiner's observations regarding the legislative history and purpose of Section 8 (c) of the Act. We do find, however, that Potruch's statement at one of these group meetings, as testified to by employee Smith, who was generally credited by the Trial Examiner, that "there would be a new deal after the first of the month,"¹⁰ was a promise of benefit violative of Section 8 (a) (1) of the Act.

3. The Trial Examiner found that employee Leonard was discharged on March 31, 1950, because of his membership in and activities on behalf of the Union, and because he gave testimony in the representation proceedings herein, and that the Respondent thereby violated Section 8 (a) (3) and (4) of the Act. Upon an examination of the entire

⁹In finding that Potruch's "two speeches" violated Section 8 (a) (1), the Trial Examiner apparently had reference to the talk repeated to several groups of employees about 2 weeks before the election as the second speech.

¹⁰The election was held on June 1, 1950.

record herein, including the testimony of the witnesses at the representation hearing, we are of the opinion, however, that the record does not establish that Leonard's testimony, as distinguished from his union membership and activity, was a motivating factor in his discharge. Accordingly, we shall dismiss the complaint insofar as it alleges that Leonard's discharge violated Section 8 (a) (4) of the Act. We are convinced, however, that Leonard was discharged because of his leadership in union activities among the Respondent's employees, as set forth in the Intermediate Report, and we therefore find, as did the Trial Examiner, that the Respondent by discharging him violated Section 8 (a) (3) of the Act.¹¹

4. The Trial Examiner found, and we agree, that the Respondent refused to bargain with the Union in violation of Section 8 (a) (5) of the Act;¹² and also, that the election of June 1, 1950, did not represent the free and uncoerced choice of

¹¹In arriving at this conclusion, we do not, however, adopt the Trial Examiner's remarks that under the circumstances, "it was incumbent upon the Respondent to produce its records or other reliable evidence, in place and stead of the mere statements of Howell and Bordeaux, to prove that Leonard's discharge was necessitated by economic reasons."

¹²Although Member Murdock would dissent from this finding for the reasons stated in his dissenting opinion in the M. H. Davidson Company case, 94 NLRB No. 34, he considers himself bound by the majority's decision in that case.

the Respondent's employees and should be set aside. We date the Respondent's refusal to bargain, however, from February 1, 1950, when the Respondent received the Union's request for recognition, and not, as did the Trial Examiner, from January 31, 1950, when the Union achieved a majority and mailed its recognition request to the Respondent.

Upon receipt of the Union's request for recognition, which the Respondent ignored, it promptly embarked on a campaign of unfair labor practices, which included interrogation of its employees concerning their union membership and activity, threats of reprisal against them if they joined the Union or selected it as their bargaining representative, promises of benefit if they rejected the Union, and the discharge of employee Leonard because, as we have found, of his union membership and activity. Nor did the Respondent fail to respond to the Union's request for recognition because it was awaiting the outcome before the Board of the representation proceeding. On the contrary, the Respondent told its employees that the Board did not have jurisdiction over its operations, and that it would not abide by the Board's determination in that proceeding if the Board resolved the jurisdictional issue against the Respondent, but would litigate that issue to the Respondent's "last dollar" through the Supreme Court, if necessary.

Under the foregoing circumstances, and on the basis of the entire record, we are convinced that

the Respondent did not withhold recognition of the Union because of a good faith doubt of the Union's majority in an appropriate unit.¹³ We find, on the contrary, that the Respondent's refusal to recognize the Union on February 1, 1950, and thereafter, was motivated by a desire to gain time in which to destroy the Union's majority, and by a rejection of the collective bargaining principle.¹⁴ Furthermore, we do not regard the Respondent's asserted desire to contest the Board's jurisdiction as a defense to its refusal to bargain with the majority representative of its employees.¹⁵

¹³We also note in this connection Potruch's testimony that in the course of his address to the employees in March or April, 1950, he told them "that I would not have gone out and paid anybody to go in and represent me until I first had the opportunity to do my own talking," and "that it had gone too far for any of the men to do that; that they had selected voluntarily somebody to represent them and that person would do all their talking for them at any time they wanted to."

¹⁴*Joy Silk Mills v. N.L.R.B.*, 185 F. 2d 732 (C. A., D. C.); *N.L.R.B. v. Everett Van Kleeck & Company, Inc.*, No. 202, May 31, 1951; C. A. 2.

Indicative of the Respondent's attitude toward collective bargaining are Potruch's statements to the employees in the latter part of April, 1950, that if they had any problems they could take them to Howell, who would straighten them out, that if he did not they should take a rope and hang him, and that the Respondent didn't like a group of men in Washington telling it how to run its business.

¹⁵*The Strang Garage Company*, 93 NLRB No. 158.

5. We have found that attorney Potruch's statements to the Respondent's employees that the Respondent would contest the jurisdiction of the Board did not violate Section 8 (a) (1) of the Act. However, we find that these statements were calculated to impress upon the Respondent's employees the futility of voting for the Union and that the Respondent thereby, as well as by the conduct which we have found violated Section 8 (a) (1) and (3), created an atmosphere incompatible with the freedom of choice of its employees in their selection of a bargaining representative, thus interfering with the election.¹⁶ The Respondent urges, however, that by proceeding with the election herein with knowledge of the Respondent's interference with the election, the Union waived its right to have the election set aside. We find this contention to be without merit. As no genuine question concerning representation existed at any time by reason of the Respondent's bad faith in refusing to recognize the Union, we regard the election as a nullity and shall set it aside.¹⁷

The Remedy

As recommended by the Trial Examiner, we shall order the Respondent to offer to the discharged employee listed in our Order reinstatement with

¹⁶Metropolitan Life Insurance Company, 90 NLRB No. 129.

¹⁷The M. H. Davidson Company, *supra*.

back pay from the date of the discrimination against him. However, the Board has recently adopted a method of computing back pay different from that prescribed by the Trial Examiner.¹⁸ Consistent with that policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to the date of reinstatement, or a proper offer of reinstatement. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting, from a sum equal to that which this employee would normally have earned for each quarter or portion thereof, his net earnings,¹⁹ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

We shall also order, in accordance with the Woolworth decision, *supra*, that the Respondent, upon request, make available to the Board and its agents all records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of our Order.

Order

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board

¹⁸F. W. Woolworth Company, 90 NLRB No. 41.

¹⁹Crossett Lumber Company, 8 NLRB 440, 497-8.

hereby orders that the Respondent, Howell Chevrolet Company, Glendale, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, District Lodge No. 727, or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

(b) By means of interrogation, threats of reprisal, promises of benefit, or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from the exercise of such rights.

(c) Refusing, upon request, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all its employees at its Glendale, California, plant, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all the employees in the above-described appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Claude Leonard immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights or privileges.

(c) Make whole Claude Leonard, in the manner set forth in the section entitled "The Remedy," for any loss of pay which he may have suffered by reason of the Respondent's discrimination against him.

(d) Upon request, make available to the Board or its agents for examination and copying, all pay roll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order.

(e) Post in its plant at Glendale, California, copies of the notice attached hereto and marked "Appendix A."²⁰ Copies of said notice to be fur-

²⁰In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted in the notice, before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

nished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

And It Is Further Ordered that the election in Case No. 21-RC-1146 be set aside, and that the petition therein be, and it hereby is, dismissed.

And It Is Further Ordered that the complaint, insofar as it alleges that the Respondent violated Section 8 (a) (4) of the Act be, and it hereby is, dismissed.

Signed at Washington, D. C., July 23, 1951.

JOHN M. HOUSTON,
Member;

ABE MURDOCK,
Member;

PAUL L. STYLES,
Member,

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

Appendix A

Notice to All Employees

Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Association of Machinists, District Lodge No. 727, or in any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

We Will Not by means of interrogation, threats of reprisal, promises of benefit, or in any manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such rights may be affected by an agreement requir-

ing membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will offer to Claude Leonard immediate reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges previously enjoyed, and will make him whole for any loss of pay he may have suffered as a result of the discrimination against him.

We Will bargain collectively, upon request, with the above-named union as the exclusive representative of all our employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of work, or other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The Bargaining Unit is:

All our employees, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

All our employees are free to become, or refrain from becoming members of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of

employment against any employees because of membership in or activity on behalf of any labor organization.

Dated

**HOWELL CHEVROLET
COMPANY,
(Employer.)**

By,
(Representative.) (Title.)

This notice must remain posted for 60 days from date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board
Twenty-First Region

Case Nos. 21-CA-794 and 21-RC-1146

In the Matter of:

HOWELL CHEVROLET COMPANY,

Employer,

and

**INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, District Lodge No. 727.**

Tuesday, October 31, 1950

Pursuant to notice, the above-entitled matter came
on for hearing at 10:00 a.m.

Before: Howard Myers, Trial Examiner.

Appearances:

RALPH H. NUTTER,

Appearing on Behalf of General Counsel.

EDWARD M. SKAGEN, and

DELMAR GORDON,

Appearing on Behalf of International As-
sociation of Machinists, District Lodge
No. 727, also on Behalf of Research De-
partment, Machinists Building, Wash-
ington, D. C.

CARTER & POTRUCH, by

FREDERICK A. POTRUCH, and

JAMES M. NICOSON,

Appearing on Behalf of Howell Chevrolet
Company. [2*]

PROCEEDINGS

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A to 1-N, inclusive, for identification, were received in [11] evidence.)

* * *

(The document heretofore marked General Counsel's Exhibit No. 2, for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 2

Howell Chevrolet Co.
1000 So. Brand Blvd.
Glendale 1, Calif.

	Parts	Accessories	New Cars & Trucks
1949 Purchases from Chevrolet Division, Van Nuys	65,377.18	63,767.83	960,797.97
1949 Purchases from Others in State of California	22,865.18	14,375.17	
	88,242.36	78,143.00	
No Out of State purchases.			
1949 Sales—New Chevrolet Passenger Cars.....			1,103,975.00
1949 Sales—New Chevrolet Commercial Cars.....			143,737.85
			1,246,812.85
All in the State of California.			
1949 Sales—Parts			136,029.85
Sales—Accessories			120,820.77
All in the State of California.			

Admitted October 31, 1950.

(The document heretofore marked General Counsel's Exhibit No. 3, for identification, was received in evidence.) [13]

* * *

GENERAL COUNSEL'S EXHIBIT No. 3

Howell Chevrolet Co.
1000 So. Brand Blvd.
Glendale 4, Calif.

Suppliers of over \$500.00—1949

Name	Address	Amount	Type
A. B. C. Wiping Materials.....	1348 W. Slauson, L. A.	837.20	Rags, Clothes, etc.
Bradbury-Robb	615 W. Pico, L. A.	576.21	Stationery Supplies
California Motors	819 So. Brand, Glendale	594.80	Auto Parts
Chevrolet Motors	Van Nuys, Calif.	132,574.83	Parts & Accessories
Coast Bearing & Specialty.....	1144 So. Grand, L. A.	547.98	Parts & Accessories
Crum & Lynn	520 So. Brand, Glendale	1016.73	Auto Paint
Fey & Krause	1635 So. Figueroa St., L. A.	513.43	Auto Accessories
Garner Supply Co.	1725 W. Silver Lake Dr., L. A.	841.07	Paint Supply, etc.
Glendale Body Works	541 W. Garfield, Glendale	2698.75	Truck Bodies
Glendale Royal Tire	Brand & Chevy Chase, Glendale	1893.28	Tires & Tubes
Hugh Gracie	470 W. Colorado, Glendale	864.17	Radiator Repair
Allen Gwynn	3717 So. San Fernando, Glendale	887.15	Parts & Accessories
Jewel City Glass	500 W. Colorado, Glendale	701.90	Glass
Knox Seeman	5218 Avalon Blvd., L. A.	1000.21	Parts
Al Monroe Service	1600 E. Olympic, L. A.	1362.41	Tires & Tubes
Motor Parts Depot	200 So. Robertson, L. A.	1415.72	Parts
H. M. Parker & Sons	230 So. Central, Glendale	1295.92	Tools, Equipment
Pennzoil Co.	942 So. Hope, L. A.	3773.87	Oil, Grease

vs. Howell Chevrolet Co., etc.

Name	Address	Amount	Type
Psenner-Pauff Inc.	620 So. Brand, Glendale	2412.40	Parts, Access., Repair
Reynolds & Reynolds	400 W. Pico, L. A.	784.94	Stationery
Schultz & Co.	2801 So. Hill, L. A.	2130.67	Accessories
Seaside Oil Co.	714 W. Olympic, L. A.	2982.79	Gasoline
Standard Oil Co.	805 W. Olympic, L. A.	818.39	Oil, etc.
Sturtevant's Auto Parts	1119 So. Brand, Glendale	1050.36	Parts & Access.
Auto Electric Co.	5951 Pacific Blvd., Huntington Park	728.21	Electrical Parts
Ace Tire Co.	1100 So. Central, Glendale	573.01	Tires & Tubes
K & K Body Works	815 W. Temple, L. A.	1750.53	Truck Bodies
Fruehauf Trailer Co.	5137 So. Boyle Ave., L. A.	839.39	Truck Bodies
General Truck Equipment	746 So. Central, L. A.	813.75	Truck Bodies
Jumbo Equipment Co.	1012 So. Los Angeles St., L. A.	500.68	Parts
Lederman Bros.	1325 So. Los Angeles St., L. A.	586.66	Upholster Materials
Modern Motors	1225 So. Brand, Glendale	633.36	Parts
Martins	1243 Alvarado St., L. A.	527.50	Seat Covers
Marvs Ring & Rebores	341 W. Colorado, Glendale	563.99	Parts
Ross Top Shop	209 W. Colorado, Glendale	508.00	Tops, Seat Covers
U. S. Service & Supply	2222 So. Figueroa St., L. A.	509.39	Carburetor Supply

	No.	Cost	Reconditioning	Sales
Passenger Used Cars	368	301,859.01	17,983.70	365,985.91
Used Cars Commercial	17	11,246.78	96.32	13,812.00

Admitted October 31, 1950.

Mr. Nutter: I have in my possession a photostatic copy which I have had marked for identification as General Counsel's Exhibit No. 5. This photostatic copy was made from an original supplied by the Respondent's counsel, Mr. Potruch. This is a "Direct Dealer Selling Agreement" between the Howell Chevrolet Company and the Chevrolet Motor Division-General Motors Corporation.

I believe, Mr. Potruch, that this agreement is now in effect? Is that correct?

Mr. Potruch: Yes, sir.

Mr. Nutter: And either this agreement or one similar to [14] it will be in effect for the year 1950? Is that right?

Mr. Potruch: We do not know how long. I mean there is an agreement in effect which is similar to it or this one; and until it is revoked, it is good.

(The Document heretofore marked General Counsels Exhibit No. 5, for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 5

Form No. GSD-201-Chevrolet-49

**Chevrolet Motor Division
General Motors Corporation**

**Direct Dealer
Selling Agreement**

This Agreement, made this 1st day of Nov., A.D.

1949, by and between Chevrolet Motor Division—General Motors Corporation, hereinafter called Seller, and Howell Chevrolet Company of Glendale, Los Angeles County, California, a corporation, hereinafter called Dealer.

Witnesseth:

In Consideration of the promises hereinafter made by the parties to each other, it is agreed as follows:

First: Seller will sell and Dealer will buy Chevrolet motor vehicles and chassis, subject to the terms and conditions hereof, and Dealer shall properly develop the sale of Chevrolet motor vehicles and chassis in the following territory:

. . .

Fourth: This Agreement shall continue in force and govern all relations and transactions between the parties hereto for a term expiring October 31, 1950. At the end of such term, this Agreement shall automatically terminate without notice or action on the part of either party unless sooner terminated as hereinafter provided.

Admitted October 31, 1950.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 5-A for identification.) [15]

. . .

(The document heretofore marked General Counsel's Exhibit No. 5-A, for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 5-A

Date November 1, 1949

Zone Los Angeles, California.

Los Angeles, California

The area within the corporate limits of Los Angeles including the area lying within the following boundaries; bounded on the South by the center line of Imperial Highway East from Redondo Boulevard to the Los Angeles River, North along the West Bank of the Los Angeles River to Atlantic Boulevard, North on Atlantic Boulevard and Goodrich Boulevard to Olympic Boulevard, East on Olympic Boulevard to Simmons Avenue, North on Simmons Avenue to the Junction of Beverly Boulevard and the Western corporate limits of Montebello, North along the Western corporate limits of Montebello and Monterey Park to Coyote Pass Road, Southwest on Coyote Road to Floral Drive, West on Floral Drive to Eastern Avenue, North on Eastern Avenue to Valley Boulevard, Northeast on Valley Boulevard to the Western Corporate limits of Alhambra, South Pasadena, Pasadena, and then West and North along the Glendale corporate limits to crest of the San Rafael Hills, West along the San Rafael Hills to the Junction of Verdugo Road and La Canada Boulevard, North on La Canada Boulevard to Colina Drive, West on Colina Drive to the Glendale corporate limits, then

follow the Glendale corporate limits West and South to the Los Angeles River, West along the Los Angeles River to the corporate limits of Universal City, around the South corporate limits of Universal City to the Junction of Caluenga and Lankershim Boulevards, South on Lankershim Boulevard and its extended line to Mulholland Highway, West on Mulholland Highway to Sullivan Canyon, South on Sullivan Canyon to the intersection of Sunset Boulevard and Rockingham Avenue, continuing South on Rockingham Avenue to the East corporate limits of Santa Monica, Southeast along the East corporate limits of Santa Monica to Montana Avenue, East on Montana to Centinela Avenue, South and East on Centinela to Pico Boulevard, East on Pico Boulevard to Sepulveda Boulevard, Southeast on Sepulveda Boulevard to Centinela Boulevard, East on Centinela Boulevard to Redondo Boulevard, and South on Redondo Boulevard to Imperial Highway. The above area includes all of the following cities: Bell, Beverly Hills, Eagle Rock, Hollywood, Huntington Park, Inglewood, Maywood, Palms, Vernon, Westwood; and those parts of the following cities included within the above boundary descriptions; Culver City, Glendale, Los Angeles, Lynwood, South Gate, W. Los Angeles, Lennox and Belevedere Gardens.

Admitted October 31, 1950.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 5-B for identification.)

(The document heretofore marked General Counsel's Exhibit No. 5-B, for identification, was received in evidence.) [16]

GENERAL COUNSEL'S EXHIBIT No. 5-B

**Chevrolet Motor Division
General Motors Corporation
Metropolitan Area Addendum
To Dealer Selling Agreement**

The following is expressly declared to be a modification of your Selling Agreement and is hereby approved as such by the General Sales Manager of Chevrolet Motor Division, General Motors Corporation, hereinafter called "Seller":

"Seller has made a survey or an analysis of territories, hereinafter called Metropolitan Areas, which include cities having a population of 50,000 or more or in which two or more Chevrolet dealers have common sales responsibility, and has determined thereupon the maximum number of dealers to be located in each Metropolitan Area and the approximate geographical locations of such dealers. In any Metropolitan Area, however, where Seller shall not have made such a survey or analysis, the maximum number of Chevrolet dealers and their approximate geographical locations and, in addition, the number of established open points shall be the same as those appearing on Seller's records as of November 1, 1949.

"Seller has informed the dealers located within each Metropolitan Area as to the maximum number of dealers to be located therein and their approximate geographical locations, and no changes in respect thereto will be made unless and until a survey, analysis or review of such Metropolitan Area has been made and at least sixty (60) days notice of such proposed change shall have been given to each Chevrolet dealer located therein so that such dealer may, if he so desires, discuss same with Seller prior to the effective date of such change; provided, however, that such notice may be waived by mutual consent of Seller and all dealers located in such Metropolitan Area; and provided further, that if the Selling Agreement of a Chevrolet dealer located in a Metropolitan Area has been terminated or a dealer has knowledge that termination by either party will take place, or that termination by expiration without the grant of a further Agreement by Seller will become effective, and at that time such dealer is handling or undertakes to handle another line of motor vehicles, Seller may appoint, or cause to be appointed, a Chevrolet dealer to be located in such Metropolitan Area one month thereafter, even though the appointment of such dealer may raise temporarily the number of Chevrolet dealers in such Metropolitan Area above the said maximum.

"The word 'dealers' herein shall be construed to include both dealers and associate dealers."

**CHEVROLET MOTOR DIVISION, GENERAL
MOTORS CORPORATION.**

/s/ **W. E. FISH,**
General Sales Manager.

Per /s/ **J. W. STEELE,**
Zone Manager.

(Dealer should file this Addendum with his
current Selling Agreement.)

Admitted October 31, 1950.

(The document heretofore marked General
Counsel's Exhibit 5-C, for identification, was
received in evidence.) [17]

GENERAL COUNSEL'S EXHIBIT No. 5-C

**Direct Dealer
Selling
Agreement**

**Chevrolet Motor Division
General Motors Corporation**

Form No. GSD-202-Chevrolet

Identification No. 49-1466

**Chevrolet Motor Division
General Motors Corporation**

Terms and Conditions**Direct Dealer**

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

Selling Rights, Terms and Conditions of Sale**1. Dealer's Selling Privilege**

While this Agreement shall be and remain in effect, Dealer shall have the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis and the privilege of using the word "Chevrolet" and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. Handling of Dealer's Orders

A. Three Months' Estimate of Requirements

Dealer will, unless otherwise advised by Seller, furnish Seller for its general guidance every month, on the date specified by Seller, but not later than the sixth day of each month, an estimate, on forms provided by Seller, of his requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately.

* * *

C. Orders

Dealer's orders for Chevrolet motor vehicles and chassis shall be submitted upon order forms supplied by Seller, at intervals mutually satisfactory. If, however, in any month Seller does not ship the standard products which were scheduled for delivery during that month, the orders for such undelivered standard products will remain in effect unless cancelled in whole or in part by either Seller or Dealer upon written notice served by the one upon the other.

* * *

12. Dealer's Place of Business Satisfactory to Seller

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to

inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

* * *

14. Capital Requirements

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set standards for Dealer capital and net worth based on Seller's past experience, Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

* * *

F. Mechanical Staff

Employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners in Dealer's zone of influence.

* * *

J. Inspection of Facilities

Permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

22. Signs

Dealer will purchase, erect, and maintain at his expense the following signs as hereinafter specified:

A. A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

* * *

24. Advertising Fund

In order to give to Chevrolet dealers the advantages of a comprehensive and coordinated dealer advertising program, an Advertising Fund, composed of a dealer portion and a factory portion, has been established and is administered by Seller for the purpose of supporting such a program.

A. Dealer Portion of Fund

Seller will collect the sum of Twelve Dollars (\$12.00) for each new Chevrolet motor vehicle and

chassis purchased and paid for by Dealer, and such sums will be credited to the dealer portion of the Advertising Fund for the account of Dealer.

The amounts contributed by Dealer shall be used solely in paying the cost of local advertising, including preparation expense, in Dealer's territory, through such local advertising media as, in the judgment of Seller, will benefit Dealer. If a dealer desires to participate in local advertising in a community outside his zone of influence, he may do so provided that he shall have secured the consent in writing of the dealer or dealers in whose zone of influence such community is located, and shall have reached an agreement in writing as to the amount per car which is to be taken out of his contributions to the Advertising Fund and applied to such advertising. A copy of said consent and agreement shall be furnished to Seller.


All local advertising to be paid for out of the dealer portion of the Advertising Fund shall carry the name and address of Dealer except that if, in the judgment of Seller, that is impractical, a suitable group reference will be used.

Contributions to said Fund shall be accounted for separately. However, contributions to the Fund shall be credited to the Fund for the joint account of all dealers involved where two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of Seller advertising in said large city substantially

covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of Seller, may be considered as a common area for purposes of local advertising; contributions by all other dealers shall be credited to the Fund for the separate account of each dealer involved.

With respect to contributions of dealers located in cities, towns, or communities as aforesaid, which are credited to the Fund for the joint account of the dealers involved, the unspent portion, if any, of any such dealer's contribution, upon termination of this Agreement, shall remain in said joint account and shall be used in the payment of the cost of local advertising and not refunded to Dealer. With respect to contributions of all other dealers which are credited to the Fund for the separate account of each such dealer, the unspent portion, if any, of any such dealer's contribution, upon termination of such dealer's Selling Agreement, shall be refunded to such dealer.

As soon as practicable after the close of each calendar year during the term of this Agreement, or in the event of termination of this Agreement, as soon as practicable after the effective date of termination, Dealer shall be furnished with a statement of his account in dealer portion of said Fund or of the joint account to which he has contributed. Such statement shall show the total advertising expenditures by media classification charged against said account, the total collections and the resulting



balance, and in the case of a joint account, the amount of the individual contribution of Dealer.

B. Factory Portion of Fund

Seller will pay into the Advertising Fund the sum of Three Dollars and Seventy-five Cents (\$3.75) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the factory portion of the Advertising Fund.

The factory portion of the Fund may be used by Seller for advertising of such type in such media and at such time and place as, in the opinion of Seller, will most effectively serve the dealer needs or interests as determined by Seller.

Admitted October 31, 1950.

. . .

JACKSON HOWELL

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

. . .

Direct Examination

By Mr. Nutter:

Q. Mr. Howell, what is your occupation?

A. An automobile dealer.

Q. And do you have any occupational classification with the Respondent Howell in this case?

A. President of Howell Chevrolet Company.

(Testimony of Jackson Howell.)

Q. I see; and where is that located?

A. 1000 South Brand, Glendale.

Q. Now, Mr. Howell, just for the purposes of later testimony [18] in the case, can you describe the plant for us at the Howell Chevrolet Company—what it includes? Can you tell us the location of the various departments? I believe you have a new car sales room and you have a service room, et cetera.

A. We have a new car sales room, a parts department, a service department, lubrication department, body shop, all adjacent to 1000 South Brand.

Q. I see. That covers about a half a block, does it not, of that area?

A. It is about a half a block.

Q. And do you also have used car lots?

A. Yes.

Q. And are they located immediately adjacent or are they somewhere else on the street?

A. No. One of them is at 919 South Brand.

Q. I see. What is that? Diagonally across from your main plant there?

A. It is across the street and north.

Q. And do you have any others?

A. Then we have another lot at 1100 South Brand.

Q. Another used car lot?

A. Used car lot.

Q. Now, these various departments of the Howell Chevrolet Company—are they divided into de-

(Testimony of Jackson Howell.)

partments? Do you have a foreman or do you have a service manager? Can you tell me how [19] that works?

A. Yes. We operate with a sales manager of new cars, a parts manager in charge of the parts department, a service manager in charge of the service department with a body shop foreman under his jurisdiction, and a used car manager.

Q. I see. Now, what jurisdiction does the service manager have? Is he in charge of servicing of new cars and used cars or just new cars?

A. He is in charge of the servicing of new cars, servicing the customer cars. [20]

. . .

Q. (By Mr. Nutter): Now, Mr. Howell, you said previously you had a service manager. What is his name? A. Bordeau.

Q. And you said you had a body shop foreman?

A. That is right.

Q. And what is his name? A. Pope.

Q. And is he a new man? A. Pope, yes.

Q. And was there a man previous to him?

A. Yes, Frank Hogan.

Trial Examiner Myers: What is Mr. Pope's first name?

The Witness: Lauren.

Trial Examiner Myers: And what is the other gentleman's first name—Bordeau's?

The Witness: Fred.

L

(Testimony of Jackson Howell.)

Q. (By Mr. Nutter): Was Frank Ogen the body shop foreman in February and March of 1950?

A. I believe he was.

Q. Now, during the year 1949, Mr. Howell, did you ship any Chevrolet motor cars or trucks directly outside the State of California?

A. Not to my knowledge. [23]

Q. During the year 1950 did you ship any Chevrolet motor cars or trucks directly outside the State of California?

A. Not to my knowledge.

Trial Examiner Myers: When you say shipped you mean sold and shipped?

Mr. Nutter: Sold.

Q. (By Mr. Nutter): Did you sell any to any customers in Nevada or Arizona or outside the State of California during the year 1949?

A. I don't believe so.

Q. How about the year 1950?

A. I don't believe we did.

Trial Examiner Myers: During those years did you sell and ship to anybody located outside the State of California? I mean any automobiles or trucks.

The Witness: No. [24]

* * *

(The documents heretofore marked General Counsel's Exhibits Nos. 6 and 7 for identification were received in evidence.) [26]

GENERAL COUNSEL'S EXHIBIT No. 6

MAdison 9-1411

October 6, 1950

Henry M. Hogan, General Counsel,
General Motors Corporation,
3044 West Grand Boulevard,
Detroit, Michigan.

Re: Howell Chevrolet Co. and International
Association of Machinists, District
Lodge #727

Case No. 21-CA-794

Harbor Chevrolet Co. and/or Harbor
Realty and Finance Co. and/or Harbor
Chevrolet Corp. and International Asso-
ciation of Machinists

Case No. 21-CA-795

Dear Sir:

Please be advised that a hearing will be held in the above cases at 111 West Seventh Street, Los Angeles, California, on October 31, 1950, at 10:00 a.m. One of the subjects under investigation at this hearing will be the extent and nature of the operations of the above companies in connection with their dealership in Chevrolet products.

In the past, counsel for the Company, Frederick A. Potruch, has been unwilling to furnish this office with information concerning the extent of operations of above companies. I am further informed that the desired information is not obtainable at the

Van Nuys plant but is available in the General Accounting Office, General Motors Corporation, Detroit, Michigan.

It is my thought that if this information is furnished to me in the form of a letter from your office, all parties may be willing to stipulate as to the accuracy of the facts supplied by you and it will not be necessary to require the attendance of your officials by subpoena. In this way the inconvenience and cost of obtaining direct testimony on this subject may be avoided. Needless to say, the information which you supply will be used solely as evidence in the above cases only.

I have attached a list of items and questions, answers to which will satisfy our needs. Since the date of hearing is not far off, I will appreciate your early reply. I am aware of the fact that you have furnished like information to this office in the past and would appreciate answers in as much detail as you can give us.

Thank you for your courtesy and cooperation with me in this matter.

Very truly yours,

RALPH H. NUTTER,
Attorney.

Enclosure:

Questionnaire

Air Mail

Special Delivery

RHN/sm

List of Items and Questions

Refer to letter dated October 6, 1950

1. What general type of products are shipped to the Van Nuys, California, Fisher Body and Chevrolet Divisions, General Motors Corporation, by General Motors Corporation from outside State of California?

2. Where are these products manufactured and from what places are they shipped?

3. The approximate gross value of such shipments during the past calendar year of fiscal period.

4. A statement of:

a. The general nature of the operations carried on by the above-mentioned Van Nuys divisions and other plants, supplying above dealers.

b. What products are shipped from these divisions to the above dealers? Products shipped from other plants of Chevrolet Division to these dealers.

c. The gross value of the products so shipped to these dealers during the past calendar year or fiscal period.

d. The gross value of products shipped to Van Nuys, California, plants, Chevrolet Division of General Motors Corporation, during the past calendar year or fiscal period. The origin of such products.

e. The approximate gross value of the products, so shipped directly from outside State of California to Howell Chevrolet, Harbor Chevrolet Co. and/or Harbor Chevrolet Corp. and/or Harbor Realty & Finance Co. during the past calendar year or fiscal period.

f. To whom do the said companies make payment for the products shipped to them as indicated hereinabove.

g. With whom do the said companies place orders for the said products.

5. Whether Howell Chevrolet, Harbor Chevrolet Co. and/or Harbor Chevrolet Corp. and/or Harbor Realty & Finance Co., pursuant to franchise, contracts or other agreements or licenses, use the facilities and services of the General Motors Acceptance Corporation for the purpose of financing Chevrolet products sold by said companies, and if so, the nature and extent of such usage.

6. Whether the above companies contribute to a common General Motors advertising fund.

National Labor Relations Board**General Motors Corporation****General Motors Building****3044 West Grand Boulevard****Detroit 2, Michigan****October 25, 1950.**

**Mr. Ralph H. Nutter, Attorney,
National Labor Relations Board,
Twenty-First Region,
111 West 7th Street,
Los Angeles 14, California.**

**Subject: Howell Chevrolet Co. and Interna-
tional Association of Machinists,
District Lodge #727—Case No.
21-CA-794.**

**Harbor Chevrolet Co. and/or
Harbor Realty and Finance Co.,
and/or Harbor Chevrolet Corp.
and International Association of
Machinists—Case No. 21-CA-795.**

Dear Mr. Nutter:

**This is in response to your letter of October 6,
1950, in connection with the above-subject cases.**

**Hereinafter you will find answers to the questions
attached to your letter of October 6. The answers
are submitted in the same order as listed in the
attachment to your letter:**

**1. Motor Vehicle Production Parts, Service
Parts and Accessories.**

2. Manufactured and shipped from all parts of the United States.

3. In excess of \$5,000,000.00 from October 1, 1949, to September 30, 1950.

4. (a) Motor Vehicles are assembled and sold from assembly plants, and Service Parts and Accessories are sold from warehouses.

(b) Motor Vehicles, Service Parts and Accessories.

(c) From October 1, 1949, to September 30, 1950—

—Howell Chevrolet—In excess of \$1,500,000.00 but less than \$2,000,000.00.

Harbor Chevrolet Co.—In excess of \$500,000.00 but less than \$1,000,000.00.

Harbor Chevrolet Corp.—In excess of \$500,000.00 but less than \$750,000.00.

(d) In excess of \$5,000,000.00 from October 1, 1949, to September 30, 1950. Shipped from all parts of the United States.

(e) From October 1, 1949, to September 30, 1950—

Howell Chevrolet—In excess of \$750.00 but less than \$1,000.00.

Harbor Chevrolet Co.—In excess of \$1,000.00 but less than \$1,200.00.

Harbor Chevrolet Corp.—In excess of \$500.00 but less than \$750.00.

(f) To General Motors Corporation or if purchases are being financed, to the party who has title to such products.

(g) Motor Vehicles—Chevrolet Motor Division, General Motors Corporation.

Parts and Accessories—General Motors Parts Division, General Motors Corporation.

5. Howell Chevrolet, Harbor Chevrolet Co., and Harbor Chevrolet Corp. have used or do use the facilities and services of General Motors Acceptance Corporation. The nature and extent of such usage can be ascertained from the named companies.

With reference to the request set forth in your letter of October 18, 1950, for copies of the Direct Dealer Selling Agreements between Chevrolet and the Howell and Harbor companies, we suggest that you arrange with the dealers to have the originals which have been submitted to you photostated in order that the latter may be offered in evidence in lieu of the originals.

Very truly yours,

/s/ HENRY M. HOGAN,
General Counsel.

HSB/mj

cc: F. A. Potruch

Admitted October 31, 1950.

GENERAL COUNSEL'S EXHIBIT No. 7

Telegram

Official Business—Government Rates

From
Bureau
Chg. Appropriation
ja

October 31, 1950.

**Ralph H. Nutter,
Attorney, 21st Region,
NLRB, Los Angeles, Calif.**

Regarding Howell Chevrolet Company, Case No. 21-CA-794, the Following Information Is Furnished Pursuant to the Telephone Discussion Which You Had With Benjamin of My Staff on October 30 and in Response to Your Teletype of the Same Date. The Information Has Been Prepared on a Basis Comparable to That Used in Furnishing the Board With Similar Information in 1948 for the Highland Park Chevrolet Company, Case No. 21-RC-555. For the Period From October 1, 1949, to September 30, 1950, Inclusive, Approximately 57 Per Cent of the Components of Chevrolet Motor Vehicles Assembled by the Chevrolet Motor Division at Its Van Nuys, California, Plant Were Purchased From Within the State of California. For the Same Period, the Remaining Approximately 43 Per Cent of the Components of Chevrolet Motor Vehicles Assembled by the Chevrolet Motor Division at Its Van Nuys, California, Plant Came From Sources Outside of the State of California. In Con-

nection With Question 6 in the List of Questions Attached to Your Letter of October 6, Please Be Advised That the Company Therein Referred to Did Not or Do Not Make Contributions to a Common General Motors Advertising Fund but Did or Do Make Contributions to a Local Dealer Advertising Fund Which Is Used for Local Purposes. It Is Our Understanding That by Furnishing the Foregoing Information It Will Not Be Necessary for the Subpoenaed Van Nuys General Motors Representative to Appear. For Your Information, a Copy of This Message Is Being Sent to Mr. Potruch Who Represents Howell Chevrolet.

HENRY M. HOGAN.

Admitted October 31, 1950.

* * *

Mr. Nicoson: Prior to recalling of the witness, if your Honor please, I am informed by Mr. Nutter that he has concluded his proof on the question of commerce. We therefore wish to make a motion at this time to dismiss the entire case on the ground that there is no evidence before your Honor to prove jurisdiction within the recent decisions of the National Labor Relations Board. And I would like also your Honor's permission to argue this a little at length. [27]

* * *

Trial Examiner Myers: Well, I will still reserve decision on the motion to dismiss. I think we ought to proceed with the issues involved. [39]

* * *

(The document heretofore marked General Counsel's Exhibit No. 8 for identification was received in evidence.) [40]

GENERAL COUNSEL'S EXHIBIT No. 8**Howell Chevrolet Co.**

Payroll, Feb. 1, 1950—Mechanics, Painters, etc.

Herbert Hinz	Parts Man
Wm. Nevins	Parts Man
Harley Barnum	Mechanic
Ralph Beaty	Mechanic
Henry Gibelman	Mechanic
Iver Hopperstad	Mechanic
Lawrence Malstrom	Mechanic
Claud Leonard	Mechanic
Wm. Schoene	Mechanic
Joseph Price	Mechanic
Joseph Sciolora	Mechanic
Wm. Blakeley	Mechanic
Dolye Christian	Mechanic
Lee Fitzhugh	Mechanic
Kenneth Herrick	Mechanic
George Kirkland	Mechanic
Philip Caballero	Painter
Rudyard Cole	Trim Man
Philip Molen	Trim Man
Frank Ogan	Body Man
Paul Arnold	Body Man
Ed Daly	Body Man
Joseph Rose	Body Man
Rowland Bordeaux	Lube Man

Robert Reeve	Lube Man
Malvin Paschal	Lot Boy
Boyce Skelton	Delivery Boy
Richard Wells	Car Washer
Edward Anthony	Service Write Up Man

Admitted October 31, 1950.

* * *

(The documents heretofore marked General Counsel's Exhibit No. 9 for identification were received in evidence.)

* * *

CLAUDE LEONARD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nutter:

Q. Mr. Leonard, what is your occupation?

A. Auto mechanic.

Q. And how long have you been an auto mechanic?

A. About 25 years.

Trial Examiner Myers: For the past 25 years?

The Witness: For the past 25 years.

Q. (By Mr. Nutter): Will you briefly relate, Mr. Leonard, [41] your experience as an auto mechanic?

A. Well, all-around mechanic, in any—mostly

(Testimony of Claude Leonard.)

Chevrolet automobiles, and I can do anything on any of these.

Q. When did you first start out as an auto mechanic? Where was it?

A. St. Louis, Missouri.

Q. And what were your duties there?

A. Mechanic.

Q. In a garage there?

A. I was a mechanic for several years there.

Q. And what were your duties there?

A. Well, just all-around mechanic — brakes, front end, line mechanic, that is working on the motors, line mechanic.

Q. What are the duties of a line mechanic?

A. Well, that is work on motors, transmissions, rear ends, grinding valves.

Q. Did you say you worked on brakes, also?

A. Brakes.

Q. And did you also do any alignment?

A. Front end work.

Q. I see; and what did that consist of?

A. Well, lining up the front end, kingpins, pivot pins, upper and lower pivot pins.

Q. And did you tell us where you were first employed? Did you say it was St. Louis? [42]

A. St. Louis.

Q. And you were employed in an agency garage there—or what was it?

A. I worked five years for an independent. He used to be with General Motors. He specialized with Chevrolets.

(Testimony of Claude Leonard.)

Q. Then what did you do after that?

A. Well, I had my own shop for three years.

Q. Had your own shop in St. Louis?

A. It was about six miles from the city limits, on Highway 61.

Q. And what kind of repair did you do at your own shop? A. All kinds.

Q. All kinds?

A. That I could handle. I didn't handle big things, just a small size shop.

Q. I see. Now, did you subsequently move to California? A. Yes.

Q. And how long ago was that?

A. Eight years ago.

Q. Now, have you been employed as an auto mechanic in California? A. Yes, sir.

Trial Examiner Myers: Well, what happened in the meantime? You only told us about eight years in St. Louis and eight years here. That is 16. [43]

The Witness: Well, I had worked for automobile companies there. You know, doing the—you mean from the time—well, I had my own shop. When I gave that up I came out here.

Trial Examiner Myers: You had your own shop starting around 1939 to 1940?

The Witness: Yes; longer than that.

Trial Examiner Myers: What? I think those dates—when did you give up your shop in St. Louis?

(Testimony of Claude Leonard.)

The Witness: '41.

Trial Examiner Myers: And you came out here?

The Witness: Yes.

Trial Examiner Myers: You have been here ever since?

The Witness: Yes.

Trial Examiner Myers: What did you do then? In 1941 you gave up your shop and you had it for three years. That takes us back to 1938. Is that right?

The Witness: Yes, '38.

Trial Examiner Myers: What did you do? You worked five years for this independent man?

The Witness: That is right.

Trial Examiner Myers: That takes us back to about 1933?

The Witness: You want to know where I worked before that?

Trial Examiner Myers: Yes, where were you before 1933? Or, if you would rather put it the other way, it is all right with me, that is, from 1925 on. [44]

Q. (By Mr. Nutter): If you have been a mechanic since 1925, what did you do in the years between 1925 and 1933? Do you recall that? Did you work as an auto mechanic?

A. Yes. I was trying to figure when I left there. In 1927 I worked for Southside Chevrolet.

Trial Examiner Myers: As what?

The Witness: Mechanic.

(Testimony of Claude Leonard.)

Q. (By Mr. Nutter): How long did you work for Southside Chevrolet?

A. I didn't work there too long—probably about a year.

Q. And then did you work for any other garages or dealers between 1927 and 1933?

A. I had one independent shop for three years.

Q. Can you recollect what years those were?

A. 1929 to 1933—Ben's Auto Repair.

Trial Examiner Myers: Was that in St. Louis?

The Witness: That was in St. Louis.

Q. (By Mr. Nutter): Now, can you recall where you worked between 1925 and 1927?

A. '25 and '27?

Q. Yes. Well, if you just cannot recollect—

A. Then I was trying to figure the dates. I worked for my uncle in a service station and repair shop. That was about 1926; worked for him about two years. No, about 1925 it was, the same year I got married. That ought to be easy to [45] remember.

Q. That just about covers it. Now, when you came to California, what did you do when you came to California?

A. Well, the first job I got was with a Chevrolet dealer, Pollard-Ravenscroft in Van Nuys.

Q. How long did you work for them?

A. From March until July, I believe it was.

Trial Examiner Myers: In what year was that?

The Witness: In 1943, I guess.

(Testimony of Claude Leonard.)

Q. (By Mr. Nutter): Did you work for any other companies?

A. From there I went to Howell Chevrolet in Glendale.

Q. When did you work at Howell?

A. How long?

Q. Yes. A. A little over a year.

Q. When did you start to work at Howell?

A. Well, it was in June, I believe.

Q. Of what year?

A. Must have been 1944, '44 I believe.

Q. And what were your duties at Howell Chevrolet? A. Lineman.

Q. Lineman? A. Line mechanic.

Q. And what did you do as a line mechanic?

A. Oh, worked motors, and part of the time whatever you was given to do, why, you done. You know, if you were able to do [46] it.

Q. Well, could you tell us the kind of work you did?

A. Well, overhauling motors, transmissions, rear ends, relining brakes.

Q. Anything else?

A. Occasionally we done front end work on the line.

Q. How long did you work at Howell starting in June of 1944?

A. A little over a year I believe it was. That is the best of my knowledge. I don't know just exactly the date I left there.

(Testimony of Claude Leonard.)

Q. And then what did you do?

A. I went with an independent shop. He used to be general manager at Howell's Chevrolet. He opened up his own business.

Trial Examiner Myers: What is his name?

The Witness: William Reilly.

Trial Examiner Myers: Where was he located?

The Witness: Broadway and Louise in Glendale.

Q. (By Mr. Nutter): Do I understand that this general manager of service at Howell opened up his own shop and you went with him to work with him, is that right?

A. Yes, sir.

Q. And how long did you work with him?

A. A little over two years.

Q. And how did you happen to leave his employment?

A. Well, I got a better job—I thought I did, anyway. [47]

Q. Where was that?

A. Martin Pollard Chevrolet.

Trial Examiner Myers: Whereabouts?

The Witness: In North Hollywood.

Q. (By Mr. Nutter): Now, when you worked for William Reilly in Glendale what were your duties?

A. I was doing everything there.

Q. Well, will you tell us what you were doing?

A. Motor work, transmission, rear ends, tune up, brakes, front end—no body work.

Q. And what were your duties at Martin Pollard Chevrolet?

A. I was on the line there.

(Testimony of Claude Leonard.)

Q. And what were your duties on the line?

A. Motors, transmissions, rear ends, valves.

Q. Anything else?

A. That is all over there.

Q. And did you leave Martin Pollard?

A. Yes, sir.

Q. When did you leave them?

A. In January of 1948.

Q. And where did you go?

A. Back to Howell Chevrolet.

Q. And what were your duties at the Howell Chevrolet?

A. I went to work there as a brakeman.

Q. And what were your duties as a [48] brakeman?

A. Reline brakes, overhaul wheel cylinders and master cylinders or anything pertaining to the braking system.

Q. Did you do any other work at the Howell Chevrolet besides the brake work and cylinder work?

A. Yes, sir.

Q. What was it?

A. Oh, they had a front end man there that he wasn't on the job all the time—you know, he was off, sickly. So I taken his place different times—also when he was on his vacation.

Q. What was that man's name?

A. Al Crowley.

Q. And when was that that you did some of this alignment work?

(Testimony of Claude Leonard.)

A. June in 1949. I think Al left there when he came back off his vacation. That must have been around in August.

Q. August, 1949?

A. I am not sure now, because I don't know when he took his vacation. All I know is what I did.

Q. Then how long did you work at Howell after that?

A. Until March 31, 1950.

Q. March 31, 1950? What happened on that date?

A. I was laid off.

Q. I see. Now, while you were employed at the Howell Chevrolet did you take any courses given in mechanics, on operations, or anything of that [49] sort?

A. We take examinations once a year.

Q. What kind of an examination is that?

A. Well, they call it a General Motors examination. They issue you a diploma.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

Q. (By Mr. Nutter): I show you a document, Mr. Leonard, that I have had marked as General Counsel's Exhibit No. 10, and ask you if you could tell me what that is.

A. That is your diploma that you get after you pass the examination.

Q. What examination is that?

(Testimony of Claude Leonard.)

A. Well, it is a list of questions that are asked you and you answer them and you have to pass a grade of 70 or better.

Q. Where did you take this examination?

A. This examination was taken at the Glendale Hotel.

Q. (By Mr. Nutter): You took this examination when? [50]

A. You usually take them around in April or June. There is no certain time.

Q. When did you take the examination for this certificate? A. That? I don't know the date.

Q. I mean approximately.

A. Approximately around April.

Trial Examiner Myers: Of what year?

Q. (By Mr. Nutter): April of what year?

A. 1950.

Q. 1950. Now, I notice that on the certificate here it says the ninth year.

A. That is right.

Q. Can you tell me what that is?

A. Then '49 was my eighth year, '48 was my seventh year.

Q. Do I understand that you have taken nine such examinations?

A. Nine consecutive examinations.

Q. (By Mr. Nutter): Now, when you were em-

(Testimony of Claude Leonard.)

ployed at the Howell Chevrolet did you take such an examination for the eighth year?

A. Yes, sir. [51]

Q. And where did you take such an examination?

A. It was taken on Washington Avenue.

Q. In what city?

A. Here in Los Angeles.

Q. Did you take that—

A. Roger Young Auditorium.

Q. And that is while you were employed at Howell Chevrolet?

A. That is right.

Q. And did you get that certificate—

Trial Examiner Myers: You mean the first time or the second time?

The Witness: In '48—the eighth time.

Q. (By Mr. Nutter): And did you receive a certificate for that examination when you worked for Howell Chevrolet?

A. That is right.

Q. The eighth year you took it?

A. The eighth year.

Q. Was it similar to this one?

A. Just like this, only it got 1949 where this says 1950.

Q. How did you happen to take that examination while you worked at Howell?

A. Well, they asked me to go down and take them.

Q. Who asked?— A. The boss. [52]

* * *

(Testimony of Claude Leonard.)

Q. When you work on the line do you post such a certificate above your stall?

A. Some do and some don't.

Trial Examiner Wyers: Did you?

The Witness: No.

Q. (By Mr. Nutter): And is it your testimony that you have taken nine such examinations and received certificates showing that you are a Chevrolet approved mechanic? Is that correct?

A. That is right.

* * *

(The document heretofore marked General Counsel's Exhibit No. 10 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 10

Chevrolet Approved Mechanic
1950

To all to whom these presents shall come: Greetings

Be it known that

Claude Leonard

has completed the Course of Training as prescribed by the Chevrolet Motor Division, General Motors Corporation, for those engaged in Performing Service Operations on Chevrolet Motor Cars and Trucks. This Certificate has been issued as an Award of Merit for having successfully completed this course of instruction.

(Testimony of Claude Leonard.)

In testimony whereof I hereby affix my signature.

/s/ E. L. HARRIG,

Manager Service and
Mechanical Department.

**SUPER CHEVROLET
SERVICE.**

**NATIONAL LABOR
RELATIONS BOARD.**

Ninth Year.

Received in evidence October 31, 1950.

Q. (By Mr. Nutter): Now, Mr. Leonard, while you were employed at the Howell Chevrolet did you join any union? A. Yes, sir. [53]

Q. What union was that?

A. International Association of Machinists.

Q. And can you tell us when you joined the union?

A. About January 23rd, I believe, of 1950.

Q. I see. Now, did you hold any kind of an office in the union?

(Testimony of Claude Leonard.)

A. I was shop steward, senior chairman.

Q. And how did you happen to be senior chairman?

A. By vote of the employees at Howell Chevrolet.

Q. And when was that vote taken?

A. I believe that was on January 30th, as well as I remember.

Q. And you say that you—well, did you attend a meeting of Howell employees on January 30, 1950?

A. That is right.

Q. And where was that meeting held?

A. That is the Local Hall in Van Nuys.

Q. Local Hall of the IAM?

A. That is right.

Q. Can you tell us who was present at that meeting?

A. Well, I could tell you a few from Howell Chevrolet.

Q. Yes, that is what I want.

A. There was George Kirkland, Lee Fitzhugh, Bill Barnum.

Q. Anybody else that you recall?

A. That is all I can think of—and myself—that is all I can think of right now. [54]

Q. Were there any other Howell employees there?

A. At that meeting?

Q. Were there any you cannot remember? Do you recall if there were others there?

Trial Examiner Myers: If you thought there

(Testimony of Claude Leonard.)

were others present, though you do not remember their names.

The Witness: Yes, there were some more there, though I cannot recall their names.

Trial Examiner Myers: About how many more?

The Witness: About four.

Trial Examiner Myers: That makes about seven of you being present?

The Witness: About eight of us there.

Trial Examiner Myers: Eight?

The Witness: Yes.

* * *

Q. (By Mr. Nutter): Now, I have had marked for identification General Counsel's Exhibit No. 11, an authorization card. I will show you that and ask you to tell me what that is.

A. It is an authorization card from the Labor Board to hold an election.

Q. I will ask you if you can identify it. Notice there is a signature there. Can you tell me whose signature that is? A. Lee Fitzhugh's. [55]

Q. Can you tell me whether you saw that signature made at this meeting you referred to?

A. Yes, I saw him signing the card.

Q. Can you tell us the circumstances about how the card was signed?

A. Well, he just filled it out.

Q. The cards were passed out and you fellows filled them out? Is that it?

(Testimony of Claude Leonard.)

A. The cards were passed out.

Q. And were you present when this one was filled out? A. I was.

Q. This was at the meeting at the IAM hall?

A. Yes.

Q. And you recognize his signature?

A. Yes. [56]

* * *

(The document heretofore marked General Counsel's Exhibit No. 11 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 11

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No....., Clock
No....., Shift No....., Plant No.....
Home Address—St.: 1610 W. Glenoaks.
City: Glendale.
Tel. No.: CI 3783.

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power or

(Testimony of Claude Leonard.)

authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 30, 1950.

/s/ LEE E. FITZHUGH.

(Signature of Employee.)

LEE E. FITZHUGH

(Please Print Name.)

Admitted October 31, 1950.

• • •

Q. (By Mr. Nutter): Now, I have had marked for identification a card, an authorization card, as General Counsel's Exhibit No. 12. I show you this card here with a signature, H. William Barnum. Do you recall that? A. Yes, sir.

Q. When was that signed?

A. That was signed at the hall the night of the meeting.

Q. At the IAM hall? A. IAM hall.

Q. That was signed January 30th, was it?

A. That is right. [57]

• • •

Q. And tell us the circumstances. Were you present when—

A. I was. The cards were passed out and William Barnum signed it.

Q. And where were you when it was signed?

(Testimony of Claude Leonard.)

A. Right there with them.

Q. With whom?

A. Barnum, Lee Fitzhugh.

Q. And did you see Barnum sign the card?

A. Yes, sir. [58]

(The document heretofore marked General Counsel's Exhibit No. 12 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No 12

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.
Home Address—St.: 3345½ Sunnynook Dr.
City: Los Angeles, 39.
Tel No.:

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power or
authority heretofore given to any person or organi-
zation to represent me.

(Testimony of Claude Leonard.)

This does not obligate me financially in any way.

Date: Jan. 30, 1950.

/s/ WILLIAM BARNUM.

(Signature of Employee.)

H. WILLIAM BARNUM.

(Please Print Name.)

Admitted October 31, 1950.

Q. (By Mr. Nutter): Now, did you go to work the next day at Howell Chevrolet?

A. Yes, sir.

Q. Did you wear any union button?

A. Yes, sir.

Trial Examiner Myers: IAM button?

The Witness: IAM button.

Q. (By Mr. Nutter): What does it say on the button?

A. Just International Association of Machinists.

Q. Is that all it contains? A. 727.

Q. 727? What does that refer to? [59]

A. That is District Local 727.

Q. Was there anything else on the button?

A. No; on the one I wore. On the—

Trial Examiner Myers: Well, we are only asking you about the one you wore.

Q. (By Mr. Nutter): Yes, the one you wore.

A. The one I wore.

(Testimony of Claude Leonard.)

Q. Yes. A. "Senior Chairman," IAM.

Q. Well then, did other people wear buttons in the shop, too? A. Yes, sir.

Q. Who else wore buttons?

A. Well, the next day there was Fitzhugh, Barnum and Kirkland, and there were a few more signed up that morning. They started wearing buttons, too,—Philip Caballero and Kenny Herrick.

. . .

Q. (By Mr. Nutter): Now, I will show you a card that I have had marked as General Counsel's No. 13, and ask you if you recognize that.

A. Yes, sir.

Q. Can you tell us about that?

A. Well, that is Richard Wells. He signed that in the morning of the 31st; that was at the meeting.

Q. And could you tell us the circumstances, the time and [60] place and who were present?

A. Right there in his car.

Q. In his car? A. Yes.

Q. I mean, was he seated in his car?

A. Yes.

Q. What time of day was that?

A. In the morning, around 7:30, 7:45.

Trial Examiner Myers: Where was the car located?

The Witness: Parked at the side of Howell Chevrolet.

Q. (By Mr. Nutter): Well, did you give him the card? A. Yes, sir.

(Testimony of Claude Leonard.)

Q. Oh, you gave him the card? Now, will you tell us what happened from start to finish?

A. I gave him the card and asked him if he wanted to sign up; he knew what was going on there, and I——

Mr. Nicoson: I object to what he knew.

Trial Examiner Myers: Yes, strike it out.

The Witness: He said that he would sign it and so he signed it up there and I give it to him to sign.

Mr. Nicoson: Move to strike what he repeated as Wells having said on the grounds that it is hearsay.

Trial Examiner Myers: Strike it out. You gave him the card and he signed it? Is that right?

The Witness: That is right. [61]

* * *

(The document heretofore marked General Counsel's Exhibit No. 13 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 13

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.

Home Address—St.: 1404 Basillone.

City: Sun Valley.

Tel. No.:

hereby authorize the International Association of

(Testimony of Claude Leonard.)

Machinists to represent me as my exclusive Collective Bargaining Agent with respect to wages, hours of employment, and other conditions of employment, in accordance with the provisions of the National Labor Relations Act.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 31, 1950.

/s/ RICHARD A. WELLS.

(Signature of Employee.)

RICHARD A. WELLS.

(Please Print Name.)

Admitted October 31, 1950.

* * *

Q. (By Mr. Nutter): I have had marked for identification a card as General Counsel's Exhibit No. 14. I show this to you, Mr. Leonard, and ask you if you can identify that.

A. Yes, sir.

Q. And what is that?

A. That was Ralph Beaty. He worked on used cars.

Q. Now, will you tell us the time, place and circumstances of the signing of the card? [62]

A. Yes. I give Ralph the card and he signed it while I waited for it right there.

(Testimony of Claude Leonard.)

Q. What time was this?

A. In the morning.

Q. Was this during work or before work?

A. Before work.

Q. About what time?

A. Oh, around a quarter to eight. [63]

* * *

(The document heretofore marked General Counsel's Exhibit No. 14 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 14

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept No., Clock
No., Shift No., Plant No.

Home Address—St.: 725½ E. Acacia.

City: Glendale.

Tel. No. CI 20754.

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

(Testimony of Claude Leonard.)

This does not obligate me financially in any way.

Date: Jan. 31, 1949.

/s/ **RALPH BEATY.**

(Signature of Employee.)

RALPH BEATY.

(Please Print Name.)

Admitted October 31, 1950.

Trial Examiner Myers: When were these cards signed—Barnum's and this No. 14?

The Witness: Barnum's was signed on January 30th, and the [64] other two were signed the next day, January 31st. That was the day after the meeting.

* * *

Q. (By Mr. Nutter): I have had marked for identification a card, General Counsel's No. 15. I show you this, Mr. Leonard, and ask you if you can identify it and tell us any circumstances about it?

A. Yes. That is another used car mechanic. I left this card with him in the morning. He brought it over to me at—well, I don't know just what time, but it was before 10:00—signed. I didn't see him sign it.

Q. You left the card with him when?

A. In the morning.

Q. What time, what morning?

A. The morning of the 31st, when I saw Beaty.

Q. Did you give him that card before work?

(Testimony of Claude Leonard.)

A. Yes, sir.

Q. And what did you say to him when you gave it to him?

A. Well, I told him I had a card for him to sign.

Q. And did he take it? A. Yes, sir.

Q. What did he say to you?

A. He said he would sign it and bring it over.

Q. And then you say he brought it over to you? [65]

A. He brought it over sometime before 10:00 o'clock.

Trial Examiner Myers: That same morning?

The Witness: That same morning.

Q. (By Mr. Nutter): He brought it over to you at your place of work, is that it?

A. Yes, sir.

* * *

The Witness: He brought over the card and it was signed. I didn't see him sign it. He didn't sign it in my presence.

Q. (By Mr. Nutter): Did he say anything to you when he handed it to you? A. No.

Mr. Nutter: I now offer General Counsel's Exhibit No. 15 in evidence.

Trial Examiner Myers: Any objection?

Mr. Skagen: No objection.

Mr. Nicoson: Objected to as no proper foundation.

Trial Examiner Myers: I will overrule the objection, and receive the card in evidence; and I will ask the reporter to [66] please mark it as General Counsel's Exhibit No. 15.

(Testimony of Claude Leonard.)

(The document heretofore marked General Counsel's Exhibit No. 15 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 15

**Authorization for Representation under the
National Labor Relations Act**

I, the undersigned, employee of **Howell Chev. Co.**,
employed at, Dept. No., Clock No.

Shift No., Plant No.

Home Address—St.: 1849 San Fernando, R. D.

City:

Tel. No.

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way. ◊

Date: Jan. 31, 1950.

/s/ JOE SCIOLORO.

(Signature of Employee.)

JOE SCIOLORO.

(Please Print Name.)

Admitted October 31, 1950.

(Testimony of Claude Leonard.)

Q. (By Mr. Nutter): I have now marked for identification a card, General Counsel's Exhibit No. 16. I show you the card, Mr. Leonard, and ask you if you can identify that?

A. That is another used car mechanic. I think he was supposed to be the head mechanic over there—Larry Malstrom. I give him this card the same time I give it to Joe. And—

Trial Examiner Myers: On what date?

The Witness: On the 31st of January, 1950.

Q. (By Mr. Nutter): You mean that was in the morning?

A. In the morning, same time I give Joe the card.

Q. You mean the previous card that you gave, General Counsel's 15?

A. Yes, sir. And he said he would sign it, and bring it over.

Mr. Nicoson: Objected to—what he said—and move to strike it on the ground of hearsay.

Trial Examiner Myers: I will strike that.

Q. (By Mr. Nutter): He brought it over to you signed? A. Yes, sir.

Q. And when was that? [67]

A. Before 10:00 o'clock.

Trial Examiner Myers: The same morning?

The Witness: Same morning.

Mr. Nutter: I now offer General Counsel's Exhibit No. 15 in evidence.

(Testimony of Claude Leonard.)

Trial Examiner Myers: When you say "he," whom do you mean?

The Witness: Larry Malstrom.

* * *

Mr. Nicoson: Just a moment, please. We object to this card going into evidence on the ground of no proper foundation being laid. There is no testimony from this witness that the signature on here purports to be, or is in fact any signature placed on there by Mr. Malstrom. All the testimony shows is that he handed him the card on which there is a signature.

Under those grounds there certainly is no foundation to show that this is the signature of Mr. Malstrom or anyone else for that matter. And we will object to it on that ground.

Trial Examiner Myers: Overruled. [68]

* * *

Mr. Nutter: Do you have in your possession the signatures of any of the employees on the pay roll list?

Mr. Nicoson: I think that is immaterial and I refuse to answer the question.

* * *

(The document heretofore marked General Counsel's Exhibit No. 16 for identification was received in evidence.)

(Testimony of Claude Leonard.)

GENERAL COUNSEL'S EXHIBIT No. 16

**Authorization for Representation under the
National Labor Relations Act**

I, the undersigned, employee of Howell Chev. Co.,
employed at 919 So. Brand, Dept. No....., Clock
No....., Shift No....., Plant No.....

Home Address—St.: 101 E. Doran.

City: Glendale.

Tel. No.:

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 31, 1950.

/s/ L. A. MALSTROM.

(Signature of Employee.)

L. A. MALSTROM.

(Please Print Name.)

Admitted October 31, 1950.

(Testimony of Claude Leonard.)

Q. (By Mr. Nutter): Now, Mr. Leonard, you worked at the Howell Chevrolet up until March 31st?

A. That is right.

Q. And how were you paid?

A. A commission.

Q. On a commission basis?

A. Yes, sir—40 per cent of the flat rate price.

Q. Forty per cent of the flat rate price of the labor?

A. That is right.

Trial Examiner Myers: You mean 40 per cent of what was charged the customer?

The Witness: Yes, 40 per cent of what was charged to the [69] customer for labor.

Q. (By Mr. Nutter): While you were employed at the Howell Chevrolet did you know a man by the name of Frank Ogen?

A. Yes, sir.

Q. And who is he?

A. Body shop foreman.

Q. Now, you previously testified that you wore an IAM button, a senior chairman button? Is that correct?

A. That is right.

Q. Did you have any conversation with Mr. Hogan about that button?

A. Well, I was out there in the body shop one day at noon; and he told me to get away from him with that button on. He didn't want to get fired.

So I told him there wasn't anybody going to get fired over the buttons.

He said that Mr. Howell told him he was going to fire anybody that joined the union.

Q. And when was this?

(Testimony of Claude Leonard.)

A. Oh, that was—I don't know the date, but it was a week or so after we started wearing our buttons. [70]

* * *

Q. Do you know a man by the name of Mr. Bordeau out at the plant?

A. That was my boss.

Q. He is the service manager?

A. Service manager.

Q. Did Mr. Bordeau ever say anything to you about the union?

* * *

The Witness: Yes.

Q. (By Mr. Nutter): And when and where?

* * *

Trial Examiner Myers: When approximately?

The Witness: It was around, I would say, the last part of February.

Trial Examiner Myers: 1950?

The Witness: 1950. [71]

* * *

Q. (By Mr. Nutter): Now, you say you talked to Mr. Bordeau. Now, where was it?

A. Well, I was talking to a body man—

Q. And who was that?

A. —out in the body department. George Davis.

Q. And what happened?

(Testimony of Claude Leonard.)

A. Well, we were standing there talking and Mr. Bordeau was standing—

. . .

Q. (By Mr. Nutter): First, you were present with Mr. Davis? A. Yes, sir.

Q. And you were in the body shop?

A. Body department.

Q. About what time of day?

A. It was just before noon.

Q. And was there anyone else present? [72]

A. No.

Q. Was Mr. Bordeau present?

A. He was standing—oh, about fifty feet away, probably.

Q. And what did Mr. Bordeau say to you?

A. Well, he hollered out to me to get away from the man and let him alone, not to bother him with his work. So he didn't have no job at the time; neither did I—

Trial Examiner Myers: Who is "he"?

The Witness: Mr. Davis—and he told me to get away from the man.

Trial Examiner Myers: Now, you have got "he" in there again. Will you tell us who is "he"?

The Witness: Mr. Bordeau told me to get away from Davis and leave him alone, and that he didn't want no union campaigning around there on duty.

So I walked away from him and walked over to Mr. Bordeau and was talking to him and told him

(Testimony of Claude Leonard.)

that I wasn't union campaigning. And he told me I was to quit union campaigning around there or get out.

Q. (By Mr. Nutter): Now, when you were employed there, you stated that you worked on a commission basis. How did that work? Will you explain it to us?

A. Well, for instance, you had a brake reline that would call for ten dollars and a half. That isn't the exact figures, but that is the principal—ten and one-half labor, you know, [73] to reline the brakes. Well, I would get 40 per cent of the ten and a half.

Q. But when you were not working on a car that had been assigned to you, what did you do?

A. Nothing; time was your own.

Q. Well, by whom were you assigned jobs on cars?

A. By the service manager or service salesman.

Q. And then you would go to work on the car and get credit for labor employed on that car; is that right?

A. That is right. [74]

* * *

Q. (By Mr. Nutter): Mr. Leonard, I show you some documents that I have had marked General Counsel's 17-A through 17-F. First, I will show you General Counsel's 17-A and see if you can identify that. Can you tell me what that is?

A. That is the stub for your pay check.

Q. That was received from Howell Chevrolet?

A. That is right.

(Testimony of Claude Leonard.)

Mr. Nicolson: Objected to as leading.

Trial Examiner Myers: Overruled.

The Witness: From—

Mr. Nutter: Pardon—

The Witness: From Howell Chevrolet in [75]
1950.

(The documents heretofore marked General
Counsel's Exhibits Nos. 17-A, B, C, D, and E
for identification were received in evidence.)

GENERAL COUNSEL'S EXHIBITS NOS. 17-A to 17-E

(136)

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
96.12	96	1.44	5.94						103.50	86.68		

170175D

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

6C-17a

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
74.4	75	1.44	2.94						78.78	62.62		

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

6C-17b

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
54.4	44	70							114.40	43.00		

156.68

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

2 6C-17c

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
109.4	109	1.44	5.94						116.78	97.62		

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

3 6C-17d

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
172.90	172	2.88	11.70						186.48	154.42		

334.58

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

4 6C-17e

ADMITTED OCTOBER 31, 1950.

GENERAL COUNSEL'S EXHIBIT 17-F

SAVE THIS STATEMENT OF YOUR EARNINGS AND PAYROLL DEDUCTIONS FOR PERIOD SHOWN BELOW.

GROSS EARNINGS	DEDUCTIONS								TOTAL	NET PAY	PER. END.	CHECK NO.
	F.I.C.	F.O.B.	S. TAX	SS. NO.	UNEMP. INS.	STATE	FED. RES.	OTHER				
145.4	144	1.44	5.94						152.78	129.62		

HOWELL CHEVROLET CO.
1000 S. BRAND BLVD. -- GLENDALE 4, CALIF.

5 6C-17f

ADMITTED OCTOBER 31, 1950.

(Testimony of Claude Leonard.)

Q. (By Mr. Nutter): Mr. Leonard, I now show you General Counsel's Exhibit 17-F. Tell us if you can describe that exhibit.

A. Well, there is no date on it; but that is the only one I could find with no date, and the rest of them all showed 1949. So this must be from 1950; you know, from January 1st to the 15th. We are paid every two weeks, the 1st and 15th.

Q. I see. Now, can you tell us what the date is that you received this?

A. I would say that this is from the 1st to the 15th.

Q. To the 15th of January?

A. January, 1950. [77]

* * *

(The document heretofore marked General Counsel's Exhibit No. 17-F for identification was received in evidence.)

[See Photo Page 136.]

Q. (By Mr. Nutter): Now, Mr. Leonard, I believe you previously testified that you were discharged on March 31? A. That is right.

Q. Can you tell us the time, place and circumstances? What happened on the date that you were discharged?

A. It was on Friday at about 6:00, Friday around 6:00 o'clock. I worked overtime that night on a job I had to get out, and I finished up the

(Testimony of Claude Leonard.)

job, turned in the ticket, and went in to change clothes.

Then Mr. Bordeau and the service manager Ed Anthony come in the dressing room and Mr. Bordeau told me that he was going to have to let me go that night. And I asked him what was the reason, and he said there wasn't enough work for one man to make a living, so he was going to combine the brakes and front end together.

So I says, "Well, I have had more seniority here than the front end man. I can also do the job."

And he said, "Well, that is the way it is to be," and there wasn't nothing he could do about it.

Trial Examiner Myers: And who is the front end man—at [78] that time?

The Witness: Kenny Herrick. Kenny had been there about two months.

Q. (By Mr. Nutter): Now, Mr. Leonard, I notice that on General Counsel's 17-A, 17-B, 17-C and 17-D your earnings appear to be less than they were prior to that date. Can you tell us what you were working on? You worked on brakes during that period? A. Yes, sir.

Q. Anything else during that period?

A. No; nothing at all, only brakes.

Q. Well then, did you just hang around? Tell us, when you finished a job working on brakes, what did you do?

(Testimony of Claude Leonard.)

A. Just waited for someone else to come in with a brake job.

Q. Well, you testified previously that you were assigned jobs by the service salesman; is that right?

A. Service salesman or service manager.

Q. And if you were not assigned jobs, is it correct that you did not work at all? A. No.

Q. Were you assigned any type of work by any supervisor in the plant?

A. Other than brake work?

Q. Yes. A. No. [79]

Trial Examiner Myers: Well, when you were not working, did you receive any compensation?

The Witness: No, sir.

Trial Examiner Myers: Your job was a straight commission?

The Witness: Straight commission.

Q. (By Mr. Nutter): I believe it is your testimony that you did no other work other than the brake work?

A. No, sir—not during this time here.

Q. During that period represented by General Counsel's 17-A through 17-F?

A. That is right.

Q. Did you work in a stall?

A. Yes, we had different stalls to work in. There was a brake department, and then the line and the front end department, tune-up stalls, and things like that.

(Testimony of Claude Leonard.)

Q. And I take it that at least while you worked there there was a stall assigned for brake work; is that correct? A. Yes, sir.

Q. Was there brake work done at any other parts of the plant other than the stall where you worked?

A. There was some brake work done on the lube rack; that is, you know, anything pertaining to brakes I was supposed to get; and there was some of it done out on the lube rack, and there was some done on the tune up.

Q. And when was that work done? Will you tell us the time [80] and place?

A. A couple of the jobs that were done on the lube jobs that I happened to catch them being done out there was on March 23 and 24.

Q. Now, will you tell us the time and place and circumstances about them?

A. Well, they were adjusting brakes.

Q. Who was? A. The lube men.

* * *

Q. (By Mr. Nutter): Who were the men who worked in the lubrication department?

A. One of their names was Bordeau; that was Chub Bordeau's son. The other one we called him Tiny. I don't recall his last name.

Q. Whereabouts did those men work in relation to your brake stall?

(Testimony of Claude Leonard.)

Trial Examiner Myers: Where did they normally work?

The Witness: In the lubrication department; that is right [81] on the street shop, on the Brand side.

Trial Examiner Myers: And who were working on these two machines March 23 and 24?

The Witness: Well, when I was out there, Tiny was adjusting a set of brakes.

Q. (By Mr. Nutter): Tiny who?

A. I don't know his last name—Tiny, a lube man.

Q. You mean you were out in the lube department and you saw him?

A. Adjusting brakes.

Q. What date was that?

A. That was March—they were doing—there were two days there, March 23 and March 24.

Q. You mean this Tiny, this lube man, was doing it on both days?

A. The next day they were bleeding a set of brakes, you know, bleeding.

Trial Examiner Myers: Wait a minute. How many times did you see Tiny, the lube man, adjust brakes in the lube department?

A. One day.

Q. What day was that?

A. The 23rd.

Q. Of March?

A. March, 1950. [82]

(Testimony of Claude Leonard.)

Q. Now, what date did you see somebody bleed the brakes?

A. They were bleeding the brakes——

Q. Well, wait, now. What date?

A. The 24th of March, 1950.

Q. And who were doing that?

A. They were both.

Q. Who were both?

A. The two lube men; one of them is Bordeau and the other one is Tiny.

Q. Now, will you try to remember to say names instead of pronouns like he, they and we?

A. Yes, sir.

Q. (By Mr. Nutter): Did your duties as brake man require that you bleed brakes?

A. When it was wrote on the order to bleed the system.

Q. I see; and what does that consist of? Will you tell us what that is?

A. Well, in the brake department we have a bleeder tank.

Q. What do you do when you bleed brakes? What process is involved?

A. Let the air out of the lines.

Trial Examiner Myers: Why do you bleed the brakes?

The Witness: If it gets air in the lines, you know, in a hydraulic system, you have a spongy pedal, and you have to bleed that air out to get it out of the lines. [83]

(Testimony of Claude Leonard.)

Trial Examiner Myers: In order to make the brakes effective?

The Witness: That is right.

Trial Examiner Myers: And when there is air in the hydraulic system, the brakes do not work effectively?

The Witness: That is right; they are not effective. They get a spongy pedal.

Q. (By Mr. Nutter): Now, what process do you go through when you adjust brakes?

A. We adjust each wheel; you adjust your shoe up to your drum, to the proper clearance.

Q. And just what do you do? Physically, what do you do?

A. Well, you take a brake-adjusting spoon which you use. It has got a little cog in there you have to turn to adjust the shoes, spread them out close to the drums.

Q. Now, on any other occasion did you see any men in the lubrication department adjusting or bleeding brakes?

A. Well, I didn't see them in the lubrication department. I saw—

Mr. Nicoson: Objected to as not being responsive. All he asked was about the lubrication department.

Trial Examiner Myers: Sustain the objection.

Q. (By Mr. Nutter): Can you first answer me as to the lubrication department?

(Testimony of Claude Leonard.)

A. I didn't see any work being done in the lubrication [84] department.

Trial Examiner Myers: Where did you see it—

The Witness: I—

Trial Examiner Myers: —if you did?

The Witness: I saw Frank Hogan give him a brake adjust to do that they were doing body work on. And Bordeau told me that he was supposed to adjust them.

Trial Examiner Myers: Young Bordeau?

The Witness: Young Bordeau. And I said, "That belongs to the brake department." And he said he had orders to adjust the brakes. So I didn't adjust them; I suppose he did.

Mr. Nicoson: Move to strike what he supposed.

Trial Examiner Myers: Strike what he supposes.

Q. (By Mr. Nutter): Was there any other occasions when you saw anyone adjusting or bleeding brakes or working on the brakes?

A. Other than the lubrication department?

Q. Other than the ones you have testified to.

A. Yes, there were some—

Trial Examiner Myers: Well, when was this that the body man—

A. The date I don't know.

Q. What month?

A. It was in March.

Q. Of 1950? [85]

A. Yes.

Q. Now, you are going to tell us about another time?
A. There were—

Q. When?

A. In February, the date I don't know.

Q. What part of February?

A. The tune-up department.

Q. What part of February?

A. Around the middle part of February.

Mr. Nutter: Is this 1950?

The Witness: 1950.

Trial Examiner Myers: And in what part of March was the other one that the body man was working on?

A. It was around—oh, around the last part of March, just before I was laid off.

Q. (By Mr. Nutter): Now, can you tell us about this occasion that you said happened in the middle of February of 1950?

A. That was the tune-up man doing work I should have done, replacing stoplights' switches and hydraulic system.

Q. Well, was it your regular duty to replace stoplight switches?

A. It is—because you got to open up your master cylinder to take the stoplight switch out and put a new one in.

(Testimony of Claude Leonard.)

Q. You mean the master brake cylinder? [86]

A. That is right—from '42 on up. That is the electrical system from '42 on back. But from '42 on up you got to open up your master cylinder to get into the hydraulic system.

Q. Was it also your duty to do the work on the hydraulic systems?

A. Sure—that pertains to brakes.

Q. Do you know the individual who was doing this work? A. Doyle Christian.

Q. Whereabouts did Christian work?

A. In the tune-up department.

Q. Whereabouts is the tune-up department in relation to where you were?

A. Well, that is right as you come in the front door.

Trial Examiner Myers: Well, how far is it from your stall?

The Witness: Oh, 75 feet, approximately.

Trial Examiner Myers: On the same floor?

The Witness: Same floor.

Q. (By Mr. Nutter): Did you on any other occasion in 1950 see any work being done on brakes in any other departments of the plant?

A. Yes, the front end man done some brake work—Kenny.

Q. Kenny Herrick?

A. Herrick.

(Testimony of Claude Leonard.)

Q. And when was that and where was it? What took place?

A. Well, this was a master cylinder that I had overhauled on [87] a Chevrolet. I overhauled the master cylinder then bled the lines—and I still didn't have much pedal. I had about a half a pedal, but it was solid.

So I told Ed—that is the service salesman—that it needed the brake adjustment. He said, "No, it has been adjusted."

The guy told him it had been adjusted—the customer.

Q. When was this?

A. This was, oh, about the middle of March, I imagine. The dates I can't recall.

Trial Examiner Myers: You mean about the middle of March—

The Witness: Of 1950.

Q. (By Mr. Nutter): Now, can you go on and tell us what happened? A. So he—

Trial Examiner Myers: Who is "he"?

The Witness: Ed said no, that the customer told him that he just had the brakes adjusted.

Well, I couldn't go ahead and adjust them without authority. So the car went out; it come back in the second day with brake trouble.

So they give it to Kenny, the front end man, and told him to repair the master cylinder. So I was busy on a brake reline, but I knew he got the mas-

(Testimony of Claude Leonard.)

ter cylinder. So he tore it [88] down and asked me to come there and look at it.

Trial Examiner Myers: Who is "he"?

The Witness: Kenny. And he asked me to come out and look at it. I went out and said, "You are doing it. It is your job. It is up to you."

And he said, "I can't find a thing wrong with it."

So Kenny put the master cylinder back together, bled the lines, and he still had the same trouble I had. So I told him if he would adjust the brakes which I wanted to do to start with, the pedal would be all right.

So Kenny went and asked Ed; and Ed said no, it didn't need brake adjustment. So Kenny and I adjusted the brakes anyway until we had a solid pedal.

* * *

Q. (By Mr. Nutter): Now, Mr. Leonard, were there any other occasions when you saw anyone else doing brake work in the months of February and March of 1950?

A. Not that I recall right now.

Trial Examiner Myers: Well, did you see anybody do any kind of work that you normally did, that you saw them do in February or March of 1950, work that you ordinarily were asked to [89] do?

The Witness: No. That is about all, I believe. There was sometimes when I would be too busy to

(Testimony of Claude Leonard.)

take a job and they would give it to somebody else
—which is right. [90]

* * *

Q. (By Mr. Nutter): Now, Mr. Leonard, after you were discharged did you at any time return to the Howell Chevrolet plant?

A. Yes, I was down there a couple of times after.

Q. Well, will you tell us about when you were down there?

A. Well, the one I remember most was—

Trial Examiner Myers: Was that the first time or the second time?

The Witness: That was the last time.

Trial Examiner Myers: How many times were you there?

The Witness: I was there about three times.

Q. (By Mr. Nutter):— All right. Now, this last time, when was that?

A. The last time was on July—the date I don't recall. It was the day they had the election there.

Q. June 1, 1950?

A. I say I don't recall the date. [91]

Mr. Nutter: May it be stipulated that the election was held on June 1, 1950?

Trial Examiner Myers: What election?

Mr. Nutter: The election in Case 21-RC-1146.

(Testimony of Claude Leonard.)

Mr. Nicolson: We will stipulate that is the date.

Mr. Skagen: So stipulated.

Q. (By Mr. Nutter): Now, can you tell us what time you were down at the plant on that date?

A. It was around 11:30, I guess. That is as close as I could get.

Q. 11:30 in the morning?

A. In the morning.

Q. And whom did you see down there?

A. Well, I saw some of the boys I used to work with.

Q. Did you see anybody else?

A. I was talking to George Kirkland, and then he went away, and I was down there by the job he was working on.

Mr. Howell came up to me. I didn't know there was anybody close to me. He came up by the side of me and I looked around and saw who it was. He asked me what I was doing there, and I said, "I come down to see the boys." And he said that unless I had some good business there, "You will have to get out."

And I said, "I didn't know you felt that way about it." And he said, "I sure do." [92]

So I had to get out.

Q. Is that all there was to it?

A. That is all he said.

• • •

(Testimony of Claude Leonard.)

Cross-Examination

By Mr. Nicolson: [93]

* * *

Q. And then you came back to Mr. Howell, that is, the second time, and you came back strictly as a brakeman? A. That is right.

Q. That was the understanding when you came back to work that you would be a brakeman and that you would not be called upon to do any line work?

A. No, I didn't say I wouldn't be called upon to do anything—because he hired me, because I was an all-around mechanic to do anything.

Q. I see. But you were not hired as an all-around mechanic, [104] were you?

A. No, I was hired as a brakeman.

Q. You were hired only as a brakeman; is that correct? A. That is right.

Q. And you understood at the time you were hired as a brakeman that that is the type of work that you were to do; right? A. Yes.

Q. You understood that you were to perform any work on the line as a mechanic; is that correct?

A. Well now, I wouldn't say that—because when I wasn't busy and they were busy on the line, the service manager would give me work of that kind.

Q. Did the service manager say that at the time he put you on as a brakeman? A. No.

(Testimony of Claude Leonard.)

Q. He did not say that?

A. No, there was nothing said about that.

Q. All right; if you will just stay with me a minute, we will be all right. When you got hired the second time it was exclusively as a [105] brakeman?

. . .

The Witness: He said he put me on brakes because—if I wasn't busy on brakes that he could always swing something else to me.

Q. (By Mr. Nicolson): All right. Now, it is your testimony that when you were not busy on brakes, he did swing other things?

A. He did.

Q. When you did not have a brake job or work of that type, then he would put you on the line; right?

A. Yes.

Q. Or some other task?

A. Something—

Q. Some other task to fill in your time?

A. Yes.

Q. That is correct?

A. Yes.

Q. So that he did fill up the blank time on the brake job, where he could, with other types of mechanical work which he thought you were qualified to do; right?

A. That is right.

Q. Now, how many times would you say you worked on front ends while you were out there?

Trial Examiner Myers: You are referring to the second time?

(Testimony of Claude Leonard.)

Mr. Nicoson: Second time, yes. [106]

The Witness: Well, I had that and the brakes.

Q. (By Mr. Nicoson): No, let us confine ourselves if you will to front ends. How many times did you work on front ends during the time you were out there the second time?

A. That is hard to say because I was on it two weeks while the man was on his vacation. You just don't exactly keep tabs on the jobs you do.

Q. You know then of two weeks while the man was on his vacation that you took care of front-end work?

A. That is right.

Q. And that was in 1949 or 1950?

A. '49.

Q. '49? All right.

Trial Examiner Myers: Well, when did you go back? 1949?

The Witness: '48.

Trial Examiner Myers: You were working there from when in 1948?

The Witness: February of 1948 till March of 1950.

Trial Examiner Myers: Is it over two years?

The Witness: That is right.

Q. (By Mr. Nicoson): All right. Now, when were other occasions when you worked on front ends?

A. Well, the front-end man was off quite a bit and when he was off I would be asked to do front-end work.

(Testimony of Claude Lennard.)

Q. And what type of front-end work did you do? [107]

A. All kinds.

Q. All right. Name some of them.

A. Kingpins and bushings.

Q. Kingpins? What is that?

A. That is your kingpins that holds your spindles to the axles.

Trial Examiner Myers: Well, do they have another name for it?

The Witness: Kingpins and bushings—that is the right name.

Q. (By Mr. Nicoson): And what would you do with the kingpins?

A. Replace them if they were worn.

Q. Was that the only thing—

Trial Examiner Myers: Well, that had to do with the alignment, did it not?

The Witness: Your kingpins are your pins that hold your car.

Trial Examiner Myers: That is with the alignment of the wheels?

The Witness: That is right.

Q. (By Mr. Nicoson): What would happen if the kingpins were worn?

A. You would have a shimmyed front end.

Q. That is what causes the wheels to shimmy? Is that correct?

A. Well, other things could cause them to shimmy, too. [108]

Q. But that would cause it, too, would it not?

(Testimony of Claude Leonard.)

A. Yes, sir.

Q. Would it cause the wheels to run crooked and out of line? A. Out of line.

Q. And cause tire wear, et cetera?

A. Tire wear.

Q. The only way to repair that is to take the kingpins out and put new ones in?

A. That is right, kingpins and bushings.

Q. How many times did you do that?

A. I don't usually keep tab of the jobs I do.

Q. Do you have any idea? A. No idea.

Q. You do not know whether it was one or a million? A. It was more than one.

Q. Well, that could be two. Could it be more than two? A. More than two.

Q. What is your present recollection of it?

Trial Examiner Myers: Approximately?

The Witness: In the two weeks you would probably have three to four sets of kingpins to put in; maybe the same number of upper and lower pivot pins.

Q. (By Mr. Nicolson): Is that your recollection of the number that you put in?

A. Well, the four—they usually run that much in two weeks. [109]

Q. That is not your testimony that you put in three or four kingpins every week, is it?

A. I was working there—

Trial Examiner Myers: He is talking about the two weeks that he worked there—

(Testimony of Claude Leonard.)

Mr. Nicoson: I understand that.

Trial Examiner Myers: —while somebody was away.

Mr. Nicoson: I just wanted the record to show that it was not his testimony that he put in three or four kingpins every two-week period.

Q. (By Mr. Nicoson): Well, is it your recollection that the three or four kingpins that you put in were put in during this period that the front-end man was on his two-weeks' vacation?

A. That is the most at one time that I handled—that was during the two weeks. Maybe the other time would only be one day, maybe two days; every time he would be off I would be assigned to take care of the front-end work, which sometimes wouldn't even have a job out there.

Q. So that when the brake work was done, why they would fill in your idle time with front-end work?

A. No, I had to take care of the brake work, too.

Q. Well, you could not do front-end work and brake work at the same time.

A. There is a lot of places the front-end man does the front end and brake work. [110]

Q. Well, would you mind answering the question? Could you do those two jobs at one and the same time?

A. Well, sure, you could handle brakes with the front end.

Q. You mean you could put in the kingpins and adjust the brakes at the same time?

(Testimony of Claude Leonard.)

Mr. Nutter: Mr. Examiner, I think that——

Trial Examiner Myers: Well, he does not mean at the same moment.

Mr. Nicolson: I do not know what he means.

Mr. Nutter: Mr. Examiner——

Trial Examiner Myers: Wait a minute now.

Trial Examiner Myers: When a car comes in to have something done with the brakes and also something done with the front end, is it normally assigned to one man?

A. If they have a brakeman——

Q. All right. Now, you take Howell's. He has a brakeman and a front-end man.

A. Yes.

Q. If a car came in and needed the front end fixed or inspected, and the brakes fixed or inspected, would that car be assigned to one man?

A. If it had a brake job it would be assigned to a brake job; if a front-end job, it would be assigned to the front-end man.

Q. Well, if a car has two jobs to be done on it, front end and brakes—— [111]

A. Well, it would be assigned to two different departments.

Q. That is what he wants to know. So when they needed front end and brakes and they did not have a front-end man, you would take care of both jobs?

A. Yes, if they needed it.

Q. All right. Which one would you do first?

A. If they had a front end and brakes?

Q. It did have it. My car was busted and needed the front end and the brakes fixed.

(Testimony of Claude Leonard.)

A. Well, you do them then in conjunction, because you have to pull your wheels and then do both jobs.

Q. (By Mr. Nicoson): You say you have to pull your wheels to do a brake job?

A. Well, I wouldn't know how else to do them.

Q. All right; and what do you have to do to do a kingpin job?

A. You have to pull your wheels.

Q. Is the amount of pulling your wheels more on a kingpin job than it is on a brake job, or is it the same?

A. What do you mean?

Mr. Nutter: I submit that the question is unintelligible.

Q. (By Mr. Nicoson): Do you take off more of the wheel to do the brake job or the front-end job?

Mr. Nutter: I submit the question is still unintelligible. I do not know what "more of the wheel" is.

Trial Examiner Myers: Well, maybe if you just listen. [112]

Mr. Nicoson: I do not know about automobile repairing; I am trying to find out.

Trial Examiner Myers: I cannot say whether "more" is unintelligible, because I do not know enough about automobile mechanics. I will overrule the objection.

The Witness: You have to pull your wheel and drum to get to either one.

Q. (By Mr. Nicoson): You do not have to take off the drum for a brake adjustment?

(Testimony of Claude Leonard.)

A. Not a brake adjustment.

Q. You do not even have to take the wheel off for a brake adjustment?

A. Not a brake adjustment.

Q. But you do have to take it off for a kingpin job?

A. You have to take it off for a brake-relining job.

Q. But you do have to take the drum off for a kingpin job?

A. For a kingpin job, and for a brake relining job.

Q. Now, in this front-end job at Howell's, would you describe the stall in which the front-end work was done? Was there one or was there two stalls?

A. Two stalls: One where you usually tear them down, the front-end man tears them down and puts in the kingpins, pivot pins, and whatever is to be done; and then when he reassembles it, why, he pulls it up on the front-end machine and lines it up. [113]

Q. All right. Now, when you speak of front-end work you confine that job solely to the type of work that you have been describing here as front end; is that all of that job at Howell's?

A. Front-end work.

Q. The front-end man is confined only to the type of front-end work that you have been telling us about?

A. He was when I worked there.

(Testimony of Claude Leonard.)

Q. Is it not a fact that this particular front-end man also was required to straighten frames?

A. That is right.

Q. And they have at Mr. Howell's a frame-straightening machine, for want of a better word; is that correct? A. Yes.

Q. And is it not also a fact that you never worked on that machine during the entire time you worked at Howell's?

A. They never had a frame to be straightened.

• • •

Q. Did you work on straightening frames at any time? A. No.

Q. Had you ever worked on straightening frames? A. No.

Q. You had no experience on working with that machine out there that straightens the [114] frames? A. No frame machine. [115]

• • •

GEORGE A. KIRKLAND

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nutter:

Q. Mr. Kirkland, what is your occupation?

A. Mechanic, automobile mechanic. [123]

* * *

Q. And you are employed by some one, are you?

A. No, it is my own business.

Q. And have you worked at the Respondent Howell Chevrolet Company? A. Yes.

Q. And will you tell us when that was?

A. I worked from October, 1945, to September in 1950.

* * *

Q. (By Mr. Nutter): Mr. Kirkland, I show you this card and ask if you can identify that. Is that your signature?

A. Yes, that is an authorization card I signed.

Q. Can you tell us when you signed it?

A. 1/28.

Q. You mean January 28 in what year?

A. 1950. [124]

* * *

(The document heretofore marked General Counsel's Exhibit No. 18 for identification was received in evidence.)

(Testimony of George A. Kirkland.)

GENERAL COUNSEL'S EXHIBIT No. 18

**Authorization for Representation under the
National Labor Relations Act**

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.

Home Address—St.: 202 Lamour Dr.

City: La Canada.

Tel. No.:

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 28, 1950.

/s/ GEORGE A. KIRKLAND.

(Signature of Employee.)

GEORGE A. KIRKLAND.

(Please Print Name.)

Admitted November 1, 1950.

(Testimony of George A. Kirkland.)

Q. (By Mr. Nutter): Now, Mr. Kirkland, do you know a man by the name of Frank Ogen?

A. I do.

Q. Who is Mr. Ogen?

A. When I worked at Howell Chevrolet in the latter part of my tenure there he was the body shop foreman.

Q. Did you have any conversations with Mr. Ogen concerning the union while you were employed at Howell Chevrolet? A. Yes.

Q. Can you tell us when that was?

A. Oh, that was around the first week in February.

Q. What year? A. 1950.

Q. And where was this conversation? [125]

A. Oh, it took place in the parking lot just outside of Mr. Ogen's office.

Q. And who was present?

A. Mr. Ogen, Claude Leonard and myself.

Q. And what time of day was it?

A. It was in the afternoon, is all I can say.

Q. Now, will you tell us what was said at this conversation?

A. Well, I will have to go back a little bit to explain it.

Mr. Nicoson: I object to him going back. He may answer the questions as put to him.

The Witness: We asked Mr. Ogen.

Trial Examiner Myers: Overruled. You may go ahead. Now don't say "we." We want to know who.

(Testimony of George A. Kirkland.)

The Witness: Oh, Claude Leonard and myself went up to talk to Mr. Ogen.

Trial Examiner Myers: When—this afternoon?

The Witness: That afternoon. And we asked Mr. Ogen where he got his information that all the employees that joined the union were going to be fired.

He said he got it from Mr. Howell the evening before.

Q. (By Mr. Nutter): Was there anything more to the conversation?

A. No, that was all of it. [126]

Q. Now, what were your duties at Howell?

A. Line mechanic.

Q. And whereabouts did you work as a line mechanic?

A. I worked in the back shop between—well, there are four stalls in and across there.

Q. Four stalls?

A. And I worked in the second one from one end.

Q. And who had the other stalls?

A. On one side of me was Lee Fitzhugh; on the other side was Joe Price. On the other side of Joe Price was Claude Leonard.

Q. While you were working in your stall could you see individuals who were working in the stall that Claude Leonard worked in? A. Yes.

Q. Now, do you recollect how long Claude Leonard worked at Howell? Did he work there all the time you worked there?

(Testimony of George A. Kirkland.)

A. No; about two years of that time.

Q. And do you recall about when he left the employment there?

A. I believe it was the latter part of March.

Q. And after Claude Leonard left employment at Howell did you see any individual working in his stall—brake stall?

A. Yes, for a few days until they moved the brake stall outside. [127]

Q. Yes. And who did you see there?

A. The man that took over the brake work, Kenny Herrick, would come in there and do the work that was necessary to be done on the equipment that was inside.

Q. Now, before Claude Leonard left his employment at Howell Chevrolet, during the months of February and March, 1950, did you see anyone else doing brake work there? A. Yes.

Q. And when and where and who did you see?

A. Well, all during that time the brake adjustments were taken out to the lube rack.

Q. And did you see whom working on the brake adjustments on the lube rack?

A. Fred Bordeau and Tiny Reeves.

Q. And when was this that you saw this brake work done at the lube rack?

A. It was during February and March.

Q. 1950? A. 1950. [128]

. . .

Q. Now, did you see anybody adjusting brakes

(Testimony of George A. Kirkland.)

out on the lube rack? How many times did you see individuals adjusting brakes out on the lube rack at Howell Chevrolet?

A. I checked on it four or five times.

Q. Four or five times? A. Yes.

Trial Examiner Myers: During what period?

The Witness: During that period between February and March.

Trial Examiner Myers: 1950?

The Witness: 1950.

Q. (By Mr. Nutter): And you checked on it and you saw someone doing brake adjustments?

A. Yes. [129]

Trial Examiner Myers: Who did you see doing it?

The Witness: Fred Bordeau and Tiny Reeve, the lubrication man.

Q. (By Mr. Nutter): Did you see anyone else doing brake work during the months of February and March, 1950?

A. Well, the tune-up man put on stop-light switches.

Q. Who was the tune-up man?

A. Doyle Christian.

Q. And when was that—where?

A. That was during that same period. I don't recall any specific time.

Q. Do you remember on how many occasions you saw the tune-up man put on stop-light switches?

A. Only twice that I can say definitely.

Mr. Nutter: I see.

(Testimony of George A. Kirkland.)

Trial Examiner Myers: That is during the period of what?

The Witness: During that period February and March, 1950.

Q. (By Mr. Nutter): Now, during the time that you were employed at Howell Chevrolet did you hear any speeches made by Mr. Potruch, the counsel here? A. I did.

Q. Now, can you tell us when that was?

A. As near as I can recall it was the middle or the latter part of April. [130]

Q. 1950? A. 1950.

Q. Now, can you tell us what occasion this was and who was present?

A. Well, one morning—that was just before noon, I believe. Mr. Bordeau came around and told us to gather over in this specified spot in the shop, that “we are going to have a little meeting.”

So all the employees gathered over there and Mr. Howell introduced Mr. Potruch as the company lawyer. He said we were having a little labor difficulty and Mr. Potruch was going to explain the company's policy.

Q. Now, will you tell us what Mr. Potruch said at this meeting.

A. Mr. Potruch said Howell Chevrolet was a small company and he did not think we needed a union; if we had any problems we could go to Mr. Howell and he would straighten them out for us.

He also said that we would never get a union

(Testimony of George A. Kirkland.)

contract at Howell Chevrolet; that we would have to strike, and that it would be a long strike as they would take it to the courts and fight it clear up to the Supreme Court. They would fight it because they didn't like a group of men in Washington telling them how to run their business. He also said he would fight it to Mr. Howell's last [131] dollar.

Q. Was there anything else said by Mr. Potruch at this meeting?

A. He said if Mr. Howell didn't take care of our problems we should take a rope and take him out and hang him.

Q. Anything else said?

A. I can't recall. [132]

Q. Was there anything else said that you recall?

A. Oh, he took out a little book and read a passage out of it pertaining to the labor law and said that that showed that Howell Chevrolet Company could sue to show that they were not in interstate commerce.

Mr. Nutter: That's all.

* * *

Cross-Examination

By Mr. Nicoson: a.

Q. You were there at the time Mr. Leonard left, were you not? A. Yes.

Q. And after he left the only person who worked in his stall was Mr. Herrick, wasn't it?

A. In the stall where he was, yes.

(Testimony of George A. Kirkland.)

Q. And then after that they moved some of the equipment outside near the frame straightening rack? A. Yes. [133]

Q. And after that time Mr. Herrick worked there, too? A. Yes.

Q. And the stall where Mr. Leonard had been working was reconverted to a line mechanic, wasn't it? A. Yes.

Q. And then the brake work and front-end work was all done by Mr. Herrick outside in this new place where they moved the equipment?

A. Yes.

Q. And he was the only one that worked at that place, wasn't he?

A. When he would get busy he would have a man come in and help him.

Q. He brought a man in from outside, didn't he?

A. I don't know. It was a new man there. He just came in at those times.

Q. He was only there a few days?

A. Yes. He would come off and on.

Q. A day at a time? A. Yes.

Q. Probably one day a month?

A. No, I think it was more than that. I would say about six or eight times.

Q. But you didn't make any particular check as to how often he came in or who paid him, or anything about it? [134] A. No.

Q. Now, you stated something about discovering brake work being done on the lube rack. Didn't

(Testimony of George A. Kirkland.)

you know that brake work had been done on the lube rack all the time that you were out there—long before you came?

A. It had been done out there when the brake man was busy and couldn't take care of it.

Q. As a matter of fact, it had been the practice of the company to do these minor brake jobs on the lube rack because it was convenient?

A. When the brake man was busy.

Q. You say you know about brakes?

A. Yes.

Q. And the adjustment is not a terrifically complicated thing, is it? A. No.

Q. It consists something of taking a wrench or a tool and tightening a set-screw, or some arrangement like that, which expands the shoes?

A. Yes.

Q. And it is quite a simple matter to do that while the car is on the lube hoist and it is easy to get to, isn't it? A. That is right.

Q. And ordinarily that wouldn't take very long, would it, four or five minutes at the most?—[135]

A. Well, you have to check the fluid. It takes a little longer than that.

Q. Well, if you are just adjusting the brakes without checking the fluid. Of course you would have to bring it down to check the fluid. You can't do that while it is up in the air. So that the mechanical time actually devoted to the setting of these set-screws is three or four or five minutes, is very short? A. About ten minutes, yes, sir.

(Testimony of George A. Kirkland.)

Q. Now, isn't it also a fact that the tune-up man had been working on stop-light switches for a long, long time?

A. He had been working on the later type stop-light switches, which are electric. The earlier type are hydraulic. Those are the ones we were speaking of.

Q. And the electric stop-light switches have been part of the tune-up job as long as you have known about the electric stop-light switches?

A. That is right.

Q. Now, just take the speech of Mr. Potruch. Mr. Potruch didn't tell you that anybody would be fired if they joined the union, did he? A. No.

Q. He didn't say—he didn't give you any promises of any benefits or anything like that if you voted against the union, did he? [136]

A. No.

Q. He told you that the Howell Chevrolet Company thought that the Howell Chevrolet Company was not engaged in commerce, in interstate commerce. Isn't that right? A. Yes.

* * *

Q. And he also told you that because of that thought or conviction he was of the opinion that the matter should be tested in court. Isn't that correct? A. He said it should be tested in court.

Q. And he outlined to you the only steps available to the company to get that into court for review? A. Yes.

(Testimony of George A. Kirkland.)

Q. And he told you that if he did not succeed in the first review that it may be necessary to go to the Supreme Court of the United States?

A. Yes.

Q. Now he also told you that in order to get that case to the court, under the rules of the Board and the law, it would be necessary for the company to take a position of refusing to bargain in order to test the Board's finding, didn't he, or something to that effect? [137]

A. Yes.

Q. And that was the only available way that the company had to get the matter into court for test on the jurisdiction question? He said that, didn't he?

A. Yes. [138]

* * *

Q. And he told you that the company couldn't make any changes at that time with the Labor Board case pending, because they would probably be charged with unfair labor practice if they did; isn't that right?

A. No.

Q. What did he say about that?

A. He said they couldn't make any labor changes unless they asked the union.

* * *

Q. Well now, specifically he said that with this Labor Board case pending the company couldn't raise any wages, didn't he?

A. Without asking the union.

Q. Without asking the union. He also said that

(Testimony of George A. Kirkland.)

they couldn't make any changes in working conditions? A. That is right. [140]

* * *

Q. Mr. Potruch told you and the rest of the employees there that it was your right to join the union if you wanted to? A. Yes.

* * *

Q. Well, he did tell you that the employer had nothing to say about whether you joined the union or not? A. Yes.

Q. Any more than the employer could say that you could join the Elks, Masons or any other fraternity. He said that, didn't he?

Trial Examiner Myers: Answer, will you, please?

The Witness: Yes.

Q. (By Mr. Nicoson): Now, he also expressed a personal opinion to you about the need of the union, didn't he? A. Yes.

Q. And he told you that in his judgment the way the thing should be handled was that if you had a beef with the employer [141] that you ought to give the employer a chance first, isn't that right?

A. Yes.

Q. And then if the employer didn't make the adjustment to your satisfaction, you ought to try to hang him? A. Yes.

* * *

Q. Now, this second time he spoke to you, you say was a little group inside Mr. Bordeau's office?

A. Yes. [142]

(Testimony of George A. Kirkland.)

Q. And at that meeting he explained to you the ballot? A. Yes.

Q. He had a sample ballot in his hand and he held it up for you to look at? A. Yes, sir.

Q. And he told you that there were two methods of marking the ballot? A. Yes.

Q. If you wanted to vote for the union you would put your X in this square where it said for the unions? A. Yes.

Q. And if you wanted to vote against the union you would put your X over in the square where it says "No Union"? A. Yes.

Q. And he also told you that this election would be held by an agent of the government from the National Labor Relations Board? A. Yes.

Q. And that this agent would come out and he would be the one that would conduct the election, right? A. Yes.

Q. That the agent would be the only one to handle the ballot except you and the other voters? A. Yes.

Q. That the agent would hand you a ballot; that you would [143] go in a secret booth and would secretly mark it and you would yourself personally put it in a ballot box? A. Yes.

Q. And that no one would ever know, unless you told them, how that ballot was marked, isn't that right? He told you all of that?

A. That is right.

Q. And that is the way it happened, wasn't it?

A. That is right.

(Testimony of George A. Kirkland.)

Q. Was anything said by Mr. Potruch that caused you to mark your ballot in any particular way?

Mr. Nutter: Mr. Examiner, I object to this question.

Trial Examiner Myers: I will sustain the objection.

Mr. Nicoson: Your Honor, I don't like to argue these things with you, but he makes an objection without giving any grounds, and you make a ruling without giving any grounds. I—

Trial Examiner Myers: There are several court decisions on that question.

Mr. Nicoson: That may be so, but the record still doesn't show the basis of the objection or the basis of the ruling. [144]

* * *

Redirect Examination

By Mr. Nutter:

Q. Mr. Kirkland, you testified on cross-examination that it was the practice to do brake jobs—that it was the practice of the lube man to do brake jobs when the brake man was busy. On these occasions, that you testified that the lube man did brake jobs—I mean in February and March—did you see Mr. Leonard working? A. No.

Q. Was he working? A. No, he was not.

* * *

Q. (By Mr. Nutter): You testified on cross-examination, according to my notes, that Mr. Potruch said that there would be no changes in

(Testimony of George A. Kirkland.)

working conditions unless the company asked the union. Did Mr. Potruch make a statement after that? [145]

A. Yes. He said, "And by God, we won't do that."

* * *

Q. (By Mr. Skagen): Mr. Kirkland, on cross-examination you testified that it was a simple matter to adjust brakes. Would you explain what you mean by that?

A. Well, it is a simple matter to get the tool up there and wiggle it in the hole to adjust the brakes.

Q. Would it be a simple matter for a person who didn't know anything about adjusting brakes?

A. Well, I have seen some come in from the lube rack that were improperly adjusted. [146]

* * *

Recross-Examination

By Mr. Nicoson:

Q. On this brake adjustment, Mr. Kirkland, the usual practice is to take this wrench or tool and bring it up just as tight as you can get it until the wheel is practically locked and then ease off the adjustment until the wheel turns fairly easily; isn't that correct? A. Yes.

Q. And that is the process? A. Yes.

Q. And that is all there is to it? Isn't that right? A. Yes, sir. [147]

* * *

(Testimony of George A. Kirkland.)

Q. Don't you also know that at Howell Chevrolet that the lube men do other types of minor mechanical work like putting on mufflers and tail pipes, and so forth?

A. They did after Mr. Bordeau came there.

Q. That is right. And their mechanical work isn't confined simply to making these minor brake adjustments. They do other types of mechanical work on the lube rack merely because it is convenient to do it while the car is in the air? [148]

* * *

LEE E. FITZHUGH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nutter:

Q. Mr. Fitzhugh, what is your business?

A. Normally a mechanic—line mechanic.

Q. And what is your business now?

A. I have a service station and a garage and work of my own.

Q. That is in Sacramento, is it?

A. The other side of Sacramento.

Q. Were you formerly employed at Howell Chevrolet?

A. That is right.

Q. And when was that?

(Testimony of Lee E. Fitzhugh.)

A. Oh, I began there in January of 1946—January 1, 1946—and was employed there until September the 9th of 1950. [149]

Q. Mr. Fitzhugh, what were your duties at Howell Chevrolet? A. I was a line mechanic.

Q. And whereabouts did you work at the plant?

A. I worked in the first stall on the right in back, after you got in the back shop.

Q. I believe you heard Mr. Kirkland's testimony about the line-up of mechanics? A. Yes.

Q. Is that the way it was when you worked there? A. Yes, sir.

Q. Now, did you work at Howell Chevrolet when Claude Leonard worked there?

A. Yes, sir.

Q. And did you see Claude Leonard working in his stall? A. Yes, sir.

Q. What kind of work did he do there?

A. He did brake work.

Q. Now, while you were working at Howell Chevrolet, during the months of February and March of 1950, did you see Claude Leonard doing brake work?

A. Yes. He did brake work then.

Q. Pardon?

A. Yes. He did brake work then.

Q. Did you see anyone else at Howell Chevrolet doing brake work during the months of February and March, 1950? [150]

A. Well, at times I would go out on the lube

(Testimony of Lee E. Fitzhugh.)

rack after oil, and I would see them adjusting brakes out on the lube rack.

Q. Who was that?

A. That was Tiny Reeve.

Q. Tiny Reeve? A. Yes.

Q. Now, when was this, can you tell us?

A. Well, it was somewhere in the—oh, February or March, somewhere in there.

Q. On how many occasions did you see Tiny Reeve adjusting brakes out on the lube rack?

A. I don't know exactly how many occasions. I never kept track of it or anything like that. I just happened to notice him adjusting brakes when I went out there.

Q. Can you give us an approximation? Approximately how many times you saw him.

A. Maybe two or three times.

Q. And do you know exactly what he was doing when you saw him?

A. I knew he was adjusting brakes. [151]

Q. Now, were you present at the plant when a speech was made by Mr. Potruch? A. Yes.

Q. And when was that?

A. That was in, I believe, the latter part of April.

Trial Examiner Myers: You mean about the latter part of April?

The Witness: About the latter part of April, yes, sir.

(Testimony of Lee E. Fitzhugh.)

Q. (By Mr. Nuttall): Now, will you tell us about that speech, who was present, when it was called, and what was said?

A. Well, Mr. Bordeau, he called us and he said there was going to be a meeting and for us to meet in a certain place in the shop, that there would be a short meeting there of about ten minutes, or something to that effect. And so we all gathered there and Mr. Howell and Mr. Potruch came out, and Mr. Howell introduced Mr. Potruch as his attorney. He turned the meeting over to Mr. Potruch then.

Q. I see. And would you tell us what Mr. Potruch said at the meeting?

A. Well, Mr. Potruch, he said that he would try to explain [152] the company policy; they was having some labor difficulty and confusion of some kind. You know, labor difficulties of some kind, and that he didn't feel as though the union had any place in there; that he felt the employees should go to Mr. Howell and discuss it with Mr. Howell; that he felt he was capable of handling his own employees.

Q. What else did he say?

A. And he also stated that the union wouldn't get any contract with Mr. Howell. That if we would go on a strike we would be out on a strike for a long time. He also said that he would fight the case as long as Mr. Howell had the money to fight it with. I think he stated in there, "To his last dollar."

(Testimony of Lee E. Fitzhugh.)

Q. Anything else said by Mr. Potruch?

A. Well, he also said that he would carry it to a higher court, but what court I don't remember. He just said a higher court. [153]

. . .

Cross-Examination

By Mr. Nicoson:

Q. Mr. Fitzhugh, when you left the employ of the Howell Chevrolet Company in September, I believe you said, you left there of your own accord because of some family difficulties?

A. Yes, sir.

Q. And you had an understanding with Mr. Bordeau that if you came back to California and you wanted to work for Howell and [154] and he had a job vacancy you could have it, is that right?

A. That is right, sir.

Q. Now, you were one of the employees that wore a union button around the shop, weren't you?

A. Yes, sir.

Q. Did Mr. Bordeau ever speak to you about wearing that button?

A. No.

Q. Did Mr. Howell ever speak to you about wearing that button?

A. No, sir.

Q. Did Mr. Bordeau say anything to you about the fact that you had worn a button?

A. No, sir.

Q. Did Mr. Bordeau or Mr. Howell tell you how to vote in the election?

A. No, sir.

Q. Did they try to?

A. No, sir.

(Testimony of Lee E. Fitzhugh.)

Q. Did they try to say anything to you about how you should vote or not vote? A. No, sir.

Q. After Mr. Leonard left, Mr. Herrick was given that work, wasn't he?

A. Yes, sir. [155]

Q. And the stall in which Mr. Leonard had been working, the machinery was moved outside next to the frame-straightening rack? A. Yes, sir.

Q. And that stall was thereafter utilized for a line mechanic? A. Yes, sir.

Q. After that change was there anybody who worked on that job outside beside Mr. Herrick?

A. Part of the time he would have another man come in and help him.

Q. On occasional days?

A. On occasional days, yes, sir.

Q. Now, do you know how often he had this man come in there?

A. No, I don't know how often.

Q. Who operated that frame-straightening machine?

A. Kenny Herrick, I presume he operated it.

Q. Who?

A. Kenny Herrick. Now, this fellow that came in and helped him, he would also work on the frame machine, too.

Q. (By Mr. Nicoson): Now, did you ever see Mr. Leonard do any work on the frame machine?

A. No, sir.

Q. Have you ever done any work on those frame machines? [156] A. No, sir.

(Testimony of Lee E. Fitzhugh.)

Q. You have seen them, though?

A. Yes, sir.

Q. Are they somewhat complicated in their operation?

A. I don't know whether they are complicated or not. It looks like a lot of heavy work there.

* * *

Q. Mr. Potruch said to you that the company had no hand in bringing the union into the shop, or words to that effect, [157] didn't he?

A. I can't remember for sure whether he said that or not. He could have said it, but I don't remember.

* * *

Q. And he also said at that time that the company couldn't give any raises because to do so would be to commit an unfair labor practice, didn't he?

A. Well, he said that they couldn't do that unless they asked the union to do so.

Q. All right. But he did say it?

A. He did say it, yes, sir.

Q. And he also told you that he couldn't make any changes in the working conditions for the same reason? A. That is right, sir.

Q. And the reason was that the union had then pending this Labor Board case and that it, the company, didn't want to commit any unfair labor practice. He said that, didn't he? [158]

A. I believe he did say that, sir.

* * *

(Testimony of Lee E. Fitzhugh.)

Q. And he said that because they bought the cars in California and sold the cars in California?

A. Yes, he said something about that.

Q. And he also said that he had some doubts about the applicability of the National Labor Relations Act to the Howell Chevrolet Company for that reason, didn't he? A. I believe so, sir.

Q. And he said that they had raised that point before the Board in the hearing, didn't he?

A. Yes, sir. [159]

. . .

Q. Now, in connection with this question of jurisdiction he discussed with you the methods that the company could take in order to test the question of jurisdiction over the Howell Chevrolet Company, didn't he?

A. I don't remember, sir, whether he stated that or not.

Q. Do you remember him saying anything about an appeal to the court?

A. Yes. He said something about an appeal to the court.

Q. That is right. And he told you that this particular case, because of the question of jurisdiction, would probably be tested in court. Isn't that right?

A. I don't remember him saying that, sir.

Q. Don't you remember him saying that the way that they would get the question to the test of the court would be—and the only way—that the com-

(Testimony of Lee E. Fitzhugh.)

pany would have to refuse to bargain? That way they could get themselves before the court for the review of the question of jurisdiction? [160]

A. I believe he said something to that effect, sir.

Q. He said that. All right.

Mr. Potruch did say that he didn't feel that there was anything between the company and the employees that couldn't be handled without government intervention, didn't he? A. Yes, sir.

Q. Now, he also told you in connection with this court procedure that if the union won the election the company could abide by that or else take it and contest it in court, didn't he? A. Yes, sir.

Q. He said he couldn't fire anybody because of the pendency of this case, didn't he?

A. Yes, sir.

Q. And he said that nobody would be fired because of it, didn't he?

A. I don't remember whether he made that statement or not. He might have. I don't remember.

Q. Do you remember he said if he did fire anybody the union would file unfair labor practice charges? You remember that, don't you?

A. Yes, sir.

Q. That is right. He told you you had a right to join the union if you wanted to, and it was none of the employer's business? [161]

A. Yes, sir.

Q. And an employer had no more right to tell you not to join the union than he had no right to

(Testimony of Lee E. Fitzhugh.)

tell you not to join the Elks or the Masons or any fraternity you liked to join? A. Yes, sir.

* * *

Q. Do you remember him telling you that there was a type of strike where the union would call a strike in order to compel the employer to sign a contract? Do you remember him saying something like that?

A. I don't remember. It seems he said something about strikes, but I don't remember just exactly what he said.

Q. Do you remember that he told you that in a certain type of strike the employees could be replaced by the company without the requirement of taking the strikers back? Do you remember him saying something about that? [162]

A. I don't think—I don't know, sir. But he stated Howell Chevrolet wouldn't hire them back.

Q. If they went out on an economic strike, is that the way he put it?

A. He might have called it an economic strike. I don't remember.

Q. Now, you are sure that he said they wouldn't hire them back? A. Yes, sir.

Q. He also said that there were certain types of strikes which would be caused by unfair labor practices. Do you remember that?

A. I don't remember exactly his words or what he did state about that.

Q. And he said in that type of a strike that the

(Testimony of Lee E. Fitzhugh.)

employer had to take the people back and probably had to pay them back pay, didn't he?

A. Yes, I believe he did say something about that. He mentioned that.

Q. And he also gave you his opinion with respect to the need of the union out there, didn't he?

A. Well, he stated that he didn't think they needed a union there.

Q. That is right. He said he thought first you ought to take your squawk up to the boss, and then if you didn't get [163] it satisfactorily settled you ought to take him out and hang him, or words to that effect?

A. Words to that effect, yes, sir.

Q. And he also said that he thought the company shouldn't be unionized until after the boss had had a chance to straighten out the beefs, didn't he?

A. Yes, sir.

Q. In Mr. Potrueh's talk to you did he say anything would happen to your employment relations if you voted for the union?

A. No, sir.

Q. Did he ask anybody to withdraw from the union membership?

A. No, sir.

Q. Did he ask anyone if they had been approached by the union?

A. I don't think so. [164]

Q. Now, when you cast your ballot, it was a secret ballot, was it not?

A. Yes, sir.

Q. You were handed the ballot by a Board agent?

A. Yes, sir.

(Testimony of Lee E. Fitzhugh.)

Q. It never got out of your possession—

Mr. Nutter: Mr. Examiner, I object to this line of testimony.

Trial Examiner Myers: Overruled.

Q. (By Mr. Nicoson): It never got out of your possession until after you had marked it in a secret booth, is that right? A. Yes.

Q. And you deposited it in the ballot box with your own hands? A. Yes, sir.

Q. No one was in the booth while you were in there to mark it? A. No, sir.

Mr. Nicoson: That's all.

Trial Examiner Myers: Any redirect?

Redirect Examination

By Mr. Nutter:

Q. Mr. Fitzhugh, you testified on cross-examination that Mr. Herrick had another man come in and [165] help him after Mr. Leonard was discharged. Did you see Mr. Herrick and this other man working while you were employed there?

A. Yes, sir.

Q. And what was this other man doing?

A. He was helping on the frame machine, sir.

Q. And what was Herrick doing?

A. He was—oh, he would help him at times, and other times he was working on the front end.

Q. Herrick was working on the front end?

A. That is right.

Q. And this individual that was assisting Her-

(Testimony of Lee E. Fitzhugh.)

rick was working on the frame machine, is that right? A. Yes, sir.

* * *

Q. (By Mr. Skagen): Mr. Fitzhugh, you testified on cross-examination that you wore a union button. What kind of button did you wear?

A. It is an IAM.

Q. Do you know what kind of a button Mr. Leonard wore in the shop?

A. He wore a steward's button.

Q. Was that different from the other? [166]

A. Yes, sir.

Q. Do you—now, Mr. Fitzhugh, you stated on cross-examination, also, that certain machinery was moved outside the building from Mr. Leonard's stall, did you not? A. Yes, sir.

Q. What was that?

A. It was a brake lathe.

Q. Brake lathe? A. Yes, sir. [167]

* * *

CLAUDE LEONARD

a witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Continued)

By Mr. Nicoson: [168]

Q. Now, on this occasion that you saw brake

(Testimony of Claude Leonard.)

work being done on the lube rack, I believe your testimony is that that is the only time that you saw it done there.

A. What do you mean the only time?

Q. Well, you saw Tiny Reeve making an adjustment on March 23, and then on March 24 you said somebody was bleeding the line?

A. That is the dates that I recall.

Q. I see. All right. You did see it done on other occasions?

A. On other occasions.

Q. And over what period of time?

A. More so in February than March.

Q. But you did see it prior to February and March, didn't you?

A. I can't say that, because I didn't check.

Q. You didn't check. So, so far as your knowledge is concerned you don't know whether they were doing brake adjustments on the lube rack all along or not, do you? [170]

A. I know that. I was doing more of them before that.

Mr. Nicoson: Mr. Examiner, may I have an answer to my question?

Trial Examiner Myers: Strike out the answer.

Will the reporter please read the question to the witness.

(Question read.)

The Witness: I don't know.

Q. (By Mr. Nicoson): Now, with respect to the

(Testimony of Claude Leonard.)

doing of stop-light switch work on the tune up, when did you make a check on that?

A. When I noticed him doing it was in February.

Q. You saw him only doing it once?

A. Two different occasions.

Q. Both in February?

A. I believe both in February.

Q. You made no check prior to that time?

A. No.

Q. So prior to that time you don't know whether this tune-up man had been doing that type of work all along or not, do you?

A. He had been putting in electric—tending to electric stop-light switches.

Q. You knew about that?

A. I knew about that. [171]

Q. Do you know of your own knowledge whether he had also been doing the other type of stop-switch work?

A. No, I do not. [172]

. . .

GEORGE ALBERT SMITH

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined as and testified as follows:

. . .

Direct Examination

By Mr. Nutter:

. . .

Q. (By Mr. Nutter): And were you formerly employed at Howell Chevrolet?

(Testimony of George Albert Smith.)

A. Yes. [178]

Q. When was that?

A. From about March in 1950 and about six months following.

* * *

Q. (By Mr. Nutter): Mr. Smith, I show you a card, an authorization card of the IAM and ask you if you can identify that signature.

A. I can. It is my signature.

Q. Is that your signature? A. Yes, sir.

Q. Did you fill it out? A. Yes.

Mr. Nutter: I now offer General Counsel's No. 19 in evidence.

Trial Examiner Myers: When did you fill it out?

Mr. Nutter: The date is on the card.

Trial Examiner Myers: What?

Mr. Nutter: The date is on the card. I asked him if he filled it out. I assume he filled it out on the date that [179] it bears.

Q. (By Mr. Nicoson): Did you put that date in there? A. That is right.

Q. Is that the date marked there?

A. That is right.

* * *

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 19 and was received in evidence.)

(Testimony of George Albert Smith.)

GENERAL COUNSEL'S EXHIBIT No. 19

**Authorization for Representation under the
National Labor Relations Act**

I A of M

I, the undersigned, employee of Howell Chev. Co.;
Address, 1000 Brand Blvd., Glendale, Calif.

hereby authorize the Machinists' District Lodge
727 to represent me in negotiations for better wages,
hours and other conditions of employment in ac-
cordance with the provisions of the National Labor
Relations Act. Information on this card is held
in strict confidence.

This does not obligate me financially in any way.

/s/ **GEORGE A. SMITH.**

(Signature.)

GEORGE A. SMITH.

(Print Name.)

Address: 1812 Brand Blvd.

Kind of Work: Body & fender.

Date: April 24, 1950.

City: Glendale.

Phone:

Dept:

Admitted November 1, 1950.

Q. (By Mr. Nutter): Now, Mr. Smith, what
were your duties at Howell Chevrolet?

A. Body and fender work.

(Testimony of George Albert Smith.)

Q. Did you have a foreman there?

A. Yes.

Q. Who was that man? A. Frank Ogen.

Q. Now, did you have any discussion with Mr. Ogen about the union at any time while you were at Howell Chevrolet?

A. Oh, several times he would come out and ask me what I [180] was going to do about the union, or whether I was in the union, or things like that.

Q. Now, can you tell us when this was and where it was?

A. It probably took place three or four—about three weeks before the election on June 1st.

Trial Examiner Myers: What do you mean "probably"? Do you mean about?

The Witness: About.

Q. (By Mr. Nutter): And whereabouts was this? A. Out in the yard.

Trial Examiner Myers: What yard?

The Witness: Where the cars are parked.

Trial Examiner Myers: Howell Chevrolet?

The Witness: Yes.

Q. (By Mr. Nutter): What time of day was this? Just tell us one occasion. What time of day was this that Mr. Ogen spoke to you?

A. Probably around 10:30, 11:00 o'clock in the morning.

Q. Now, who was present?

A. Nobody but myself.

(Testimony of George Albert Smith.)

Q. Now will you tell us what was said in this conversation.

A. Well, he saw me talking to George Kirkland and he asked me, "Has George got you to join the union yet?"

Q. What did you say?

A. I told him, "I have always been a union man." [181]

Q. Was there anything else to the conversation?

A. No, I don't believe so.

Q. Did you talk on any other occasion to Mr. Ogen about the union?

A. Oh, sometimes he would come up and make a pass at me in just a kidding way—I don't know if he meant anything about it, and dropped it—"How you doing about the union," and something like that. Then forget about it and walk off.

Q. When was this?

A. Oh, on several occasions after the previous time I mentioned just now.

Q. I think we stipulated in the record that the election was held on June 1, 1950.

A. That is right. [182]

* * *

Q. You worked in the body shop with Mr. Ogen, did you, or under him? A. Yes.

Q. Now, can you remember in substance what he said to you on one of these occasions?

A. Well, on one occasion he told me that any man that joined the union would be fired.

(Testimony of George Albert Smith.)

Q. Was there anything else said on that occasion?

A. He never did work in a union shop; he never would. He wouldn't have any union men working under him.

Q. You say this took place just before the election?

A. Yes.

. . .

Q. Did you ever talk to him about the union, or did he talk to you about the union? [183]

A. Only on one occasion. I think we went off the premises at the time.

Q. And will you tell us what that was, where it took place and who was present.

A. Ken Herrick was present and it was at a place known as the Playhouse.

Q. The Playhouse? A. Yes.

Q. Is that where they put on plays?

A. No, it is a bar.

Q. Whereabouts is that?

A. I don't know. It is on one of the streets over in Glendale.

Q. When did this take place?

A. That was just prior to the election or to the vote.

Q. How soon prior to the election?

A. I don't imagine over two weeks at the most.

Q. Now, will you tell us what took place there at the Playhouse Cafe, or bar, is it?

A. Well, Mr. Bordeau and Ken Herrick were

(Testimony of George Albert Smith.)

talking together and were talking about the union. Mr. Bordeau said that if the union went in that Howell would shut his doors.

Q. Did you say anything?

A. I wasn't interested in that conversation at all.

Q. Was there anything else to the [184] conversation?

A. Oh, personal business of my own, yes. Nothing concerning the vote or the union, or anything like that.

Q. Were you seated with Mr. Bordeau?

A. I was standing right back of him.

Q. Standing beside him? A. Yes.

Q. And where was Mr. Herrick?

A. He was standing on the other side of him.

Trial Examiner Myers: The three of you were standing at the bar?

The Witness: No. Mr. Bordeau was seated on a stool. The other two of us were standing right behind him.

Trial Examiner Myers: At the bar?

The Witness: Yes.

Q. (By Mr. Nutter): Was there anything else to that conversation about the union?

A. No, not that I can remember. In fact, I didn't pay too much attention to that conversation.

• • •

Q. Did Mr. Howell ever talk to you about the union at any time you were employed there?

A. Just before the election day, yes.

(Testimony of George Albert Smith.)

Q. How long before?

A. The vote; probably two or three or four days. [185]

Q. And where was that?

A. In the body shop.

Q. What were you doing in the body shop?

A. Working bodies and doing fender work.

Q. And what time of day was this?

A. As near as I remember it was in the forenoon—probably 11:00 o'clock.

Q. Was there anybody else present there with you?

A. Several men working there. They wasn't right near me.

Q. Pardon?

A. They wasn't standing right near me, but they was working in the shop.

Q. Now, will you tell us what the conversation was and what took place.

A. Well, Mr. Howell told me that he didn't want the National Labor Board in there to tell him how to run his business.

And that if the union was voted out, they won the vote, they was going to 50 per cent the first of the month, which would be June the 1st.

Q. Said there was going to be what?

A. They would go to 50 per cent. That would be on June 1st.

Q. You mean commission rates?

A. Commission rates.

(Testimony of George Albert Smith.)

Q. Is that what you mean by going to 50 per cent? [186] A. Right.

Trial Examiner Myers: What were they at that time?

The Witness: 40 per cent.

Q. (By Mr. Nutter): Was there anything else said in the conversation?

A. Oh, only talking about interstate commerce, having to have so much interstate commerce, and one thing and another before the Labor Board could come in. Something to that effect. That's something I never could understand.

• • •

Q. Now, did you attend any sort of a banquet following the election? A. Yes.

Q. Where was that?

A. The Mayfair Hotel.

Q. Pardon?

A. The Mayfair Hotel in Glendale.

Q. When was that?

A. That was probably a week or ten days after the election. I don't remember just the date.

Q. Who was present at this banquet? [187]

A. Well, all the fellows in the body shop, mechanics, tune-up men, lube rack, Mr. Howell, Mr. Bordeau, and Frank Ogen and Frank Wergen.

Q. Who?

A. Frank Wergen.

Q. With all the production and maintenance employees, was it, or was it all the employees of Howell?

(Testimony of George Albert Smith.)

A. I mean, then, it was all the men employees of the shop.

Q. (By Mr. Nutter): Now, were there any speeches made at this banquet?

A. Oh, Mr. Howell made a little speech, yes, something about it wasn't just an accident the meeting come up just at the time. He went on to tell that the body shop was going to 50 per cent due to keen competition in the business. Mechanics, front end and brake men was going to 45 per [188] cent.

Q. Did you, while you were employed at Howell Chevrolet, hear any speech made by Mr. Potruch?

A. Yes.

Q. And when was that?

A. Oh, the first one was shortly after I went there. I didn't pay too much attention to that speech because I wasn't interested in the union at the time. I didn't pay too much attention to it. That was when they were all called in as a group on the service floor.

Q. Did you hear another speech by Mr. [189] Potruch? A. Yes.

Q. When was that?

A. That was possibly a week or ten days before the vote on June 1st.

Q. Where did that take place?

A. That took place in Mr. Bordeau's office.

(Testimony of George Albert Smith.)

Q. Who was present?

A. Frank Ogen, the two grease men, and let's see, one, two, three—three or four body men and Mr. Bordeau.

Trial Examiner Myers: And you.

The Witness: Right.

Q. (By Mr. Nutter): Now, will you tell us what Mr. Potruch said at that meeting.

A. Well, he had a sample ballot there at the time. At that time he told us how we could vote, how to mark the ballots one way or the other way, and went on to explain about that the union would never do us any good. He brought up an example of Baldwin Chevrolet where they hired gangsters, or one thing or another like that, to come in there and break up a strike. He told us that there would be a new deal after the first of the month, but that at that time he could not make a statement as to what it would be; but that there would be a new deal. [190]

. . .

Q. Now, you previously told us how Mr. Howell spoke to you in the body shop.

A. That is right.

Q. Was there anybody, another employee around?

A. There was another man, but he was about two cars away and he is hard of hearing. He is deaf and dumb, as a matter [191] of fact.

Q. Who is that?

(Testimony of George Albert Smith.)

A. Mr. Daly. We also refer to him as the old man.

Q. I see. Well, when did you first see Mr. Howell that time?

A. Talking to Mr. Daly.

Q. And then what happened after you saw him talking to Mr. Daly?

A. He walked over to where I was working.

Trial Examiner Myers: Who walked over?

The Witness: Mr. Howell. He walked over to me and said he was just talking to the old man, which is Mr. Daly.

Q. (By Mr. Nutter): And what did he say?

A. He started telling me about what they were going to do after the first of the month if the union wasn't voted in.

Q. Did Mr. Howell say anything else?

A. Talking about strikes. Said that if the union did come in there would be a strike. And I told him at the time that I didn't like strikes, they were costly both ways, employees and employer.

Q. Was anything else said?

A. No, I don't believe so.

* * *

Trial Examiner Myers: You say that he said what he would do after the first. What did he [192] say?

The Witness: That they would go to 50 per cent commission instead of 40. [193]

* * *

(Testimony of George Albert Smith.)

Cross-Examination

By Mr. Nicoson:

Q. Now, these conversations that you had with Ogen about these unions. You say he was kidding, and you understood he was kidding, didn't you?

A. One time he came out and point blank asked me, after he saw me talking to George Kirkland on the lot, "Has George got you to join the union yet?" And I told him I had always been a union man.

Q. And you and Mr. Ogen had kidded back and forth about the union, hadn't you?

A. After that several times.

Q. Yes. That is right. And you understood it was kidding on the part of Mr. Ogen and on the part of yourself. [195]

A. Might have been kidding.

Q. Well, that is the way you understood it, wasn't it?

A. Could have been. [196]

* * *

PAUL ARNOLD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

* * *

(Testimony of Paul Arnold.)

By Mr. Nutter:

Q. Were you formerly employed at Howell Chevrolet? A. Yes.

Q. When was that?

A. June, in 1949, is when I first went to work.

Q. How long were you employed at Howell Chevrolet?

A. I quit there in February of '50. [200]

. . .

Q. What were your duties there at Howell?

A. Metal man.

Q. Metal man? A. Body and fender man.

Q. You worked in the body shop?

A. Yes.

. . .

Q. (By Mr. Nutter): Mr. Arnold, I show you General Counsel's Exhibit 20, marked for identification, and ask you is that your signature?

A. Yes.

Q. Did you fill out that card? A. Yes.

Q. Did you fill out the date here? A. Yes.

Q. Is that January 31, 1950? [201]

A. Yes.

Q. Is that when you filled it out? A. Yes.

. . .

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

(Testimony of Paul Arnold.)

GENERAL COUNSEL'S EXHIBIT No. 20

**Authorization for Representation under the
National Labor Relations Act**

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No. 1000
Home Address—St.: 10262 Kewen.
City: Pacoima.
Tel. No.:

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 31, 1950.

/s/ PAUL W. ARNOLD.

(Signature of Employee.)

PAUL WHITTIER ARNOLD.

(Please Print Name.)

Admitted November 1, 1950.

(Testimony of Paul Arnold.)

Q. (By Mr. Nutter): Did I ask you who your foreman was when you worked out at Howell?

A. Yes.

Q. Mr. Ogen, was it? A. Yes.

Q. Did you ever talk with Mr. Ogen about the union?

A. Yes, one time I did, right after I filled a card out.

Q. How long was that after you filled the card out?

A. Well, I think it was maybe a day or two later. I am not sure exactly.

Q. And where did this conversation take [202] place? A. In the body shop.

Q. During working hours, was it?

A. Yes.

Q. And about what time of day was it?

A. Oh, I'd say sometime in the morning, just a little before noon, maybe.

Q. Was anybody else present?

A. Well, no one was present when I had the conversation.

Q. Now, will you tell us what the conversation was?

A. Well, I asked him what he thought about the union, and he told me that—I asked him what he thought about the guys going in, and he said they better watch out for their jobs, because Howell said to fire them all that are wearing buttons.

(Testimony of Paul Arnold.)

Q. (By Mr. Nutter): Did you have any discussion about buttons in this conversation? [203]

A. Just what I said.

Q. Were you wearing a union button?

A. No, I wasn't.

Q. Did you see anybody wearing a union button there in the shop? A. Yes, there was a few.

Q. Who was that?

A. I think—I don't know his name—Claude, I think is his name.

Trial Examiner Myers: Do you see him in the hearing room?

The Witness: Yes, he is back there.

Trial Examiner Myers: Whom do you mean? Will you stand up, please? Is that the man you mean?

The Witness: Yes, and Rose was wearing one for a while.

Trial Examiner Myers: Is that Claude Leonard you mean?

The Witness: Yes.

Mr. Nicolson: Who else was wearing one?

The Witness: Rose. His last name was Rose. He worked there with me, but I never did know his first name.

Q. (By Mr. Nutter): Was there anything more to this conversation you had with Mr. Hogan?

A. That was about it. I didn't ask him no more about it or say anything at all. [204]

(Testimony of Paul Arnold.)

Cross-Examination

By Mr. Nicoson:

Q. You went to Hogan with these questions, didn't you?

A. He came by the shop, and he had—he was back there and [205] I just asked him.

Q. All right. In other words, you started the conversation? A. Yes, I started it.

Q. He didn't? A. No.

Q. And you asked him for his opinion?

A. Yes.

Q. And he gave it to you? A. Yes. [206]

* * *

WILLIAM FRANCIS HANSEN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

* * *

By Mr. Nutter:

Q. And were you employed at Howell Chevrolet?

A. Yes, I was.

Q. When was that?

A. Around the first part of February, if I recollect.

Q. You first went to work there during the first part of February? A. Yes, around there.

Q. 1950, was it? A. Yes.

(Testimony of William Francis Hansen.)

Q. How long did you work there?

A. Oh, just about six months, or something like that.

Q. And what were your duties at Howell Chevrolet?
A. Washing and polishing cars. [207]

* * *

Q. Did Mr. Howell ever say anything to you about the union while you were employed at Howell Chevrolet?
A. Well, he talked to me.

* * *

Q. What did he say to you? When was that, now?
A. I voted in favor of the plant.

Mr. Nicoson: That answer is not responsive, and I move that it be stricken.

Trial Examiner Myers: The question is, when did he speak to you?

Strike the answer.

The Witness: I don't know the date. [209]

Q. (By Mr. Nutter): Well, approximately—did you vote in the election on June 1, 1950?

A. Yes, I did.

Q. Can you place the date in relation to the election?
A. I can't remember the date.

Q. Was it before or after the election?

A. Oh, before.

Q. How long before?

A. A few days, I imagine, as close as I can remember.

Q. And whereabouts did you have this conversation with Mr. Howell?

(Testimony of William Francis Hansen.)

A. Well, right next to where we washed the cars, where they polish them.

Q. And about what time of day was it?

A. Oh, in the morning, as I remember.

Q. What were you doing?

A. Putting on my boots.

Q. Then what happened?

A. That is when he came and talked to me.

Q. Mr. Howell talked to you? A. Yes.

Q. What did he say?

Mr. Nicoson: No proper foundation has been laid.

Trial Examiner Myers: Who else was there?

The Witness: Just myself. [210]

Trial Examiner Myers: Just you and Mr. Howell?

The Witness: Yes, sir.

Trial Examiner Myers: The objection is overruled.

Q. (By Mr. Nutter): What did he say?

A. He just asked me if I would vote in favor of the plant, and I said, "I will do my best."

Q. Did you attend a banquet shortly after the election for the employees of Howell Chevrolet?

A. Yes, I did.

Q. Did Mr. Howell speak at that banquet?

A. He made a little speech.

Q. Can you tell us what he said?

(Testimony of William Francis Hansen.)

A. I can't remember everything.

Q. Just what you can recall.

A. Well, something about a raise—he didn't say how much, but we would get a raise. We would have to wait a few days or a month or 30 days before we short-timers would get one, and that's about all. [211]

* * *

Q. Now, coming back to this meeting that you had with Mr. Howell at the wash rack when you were putting on your boots, do you further recall anything else that was said by Mr. Howell?

A. No, I don't.

Q. Do you mean you can't remember anything else that he said?

A. I have forgotten everything.

Q. Pardon?

A. I have forgotten all that stuff.

Q. Do you remember Mr. Howell saying anything to you about a raise at this—

A. At the banquet, yes. [212]

* * *

Q. (By Mr. Nutter): You don't recall anything about that?

A. No, I have forgot it all. [213]

* * *

Q. You made a statement and you swore to it, and you read it over, is that right? A. Yes.

Q. Now, I direct your attention to the first page

(Testimony of William Francis Hansen.)

of the document, to the last paragraph, and ask you to read that, particularly where it starts, "He said," and read that over. That is six lines from the bottom.

Have you read it over? A. Yes.

Q. Now, after reading that over, does that refresh your memory as to what Mr. Howell said to you when you were putting on your boots on that morning, prior to the election? A. Yes.

Q. What was it?

A. He just asked me if I would vote the way of the company, and he would see that we got a raise in time; so I did.

Q. Was there anything else to the conversation?

A. No. [214]

* * *

Q. (By Mr. Nutter): Do you know Mr. Bordeau? A. Yes, I do.

Q. Was he the service manager at Howell?

A. Yes.

Q. Did you ever talk to Mr. Bordeau about the union? A. No, I never did.

Q. Did Mr. Bordeau ever speak to you about the union? A. Not that I can recall. [215]

* * *

D. A. GORDON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nutter:

Q. Mr. Gordon, what is your occupation?

A. I am an organizer for the District Lodge 727, International Association of Machinists.

Q. How long have you been engaged as an organizer for 727? [216]

A. Approximately a year and three months.

* * *

Mr. Nutter: I now offer General Counsel's Exhibit 23 in evidence.

Mr. Nicoson: No objections.

Mr. Skagen: No objections.

Trial Examiner Myers: Any question about the letter being received?

Mr. Nicoson: No question raised about the foundation. We stipulate we received the original.

Trial Examiner Myers: When did you receive it?

Mr. Potruch: Whenever the return receipt says on there. [217]

Trial Examiner Myers: It says February 1.

Mr. Potruch: That's all right.

Trial Examiner Myers: Is that when you received it?

Mr. Nicoson: So stipulated.

* * *

(Testimony of D. A. Gordon.)

(The document heretofore marked General Counsel's Exhibit No. 23 for identification was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 23

Return Receipt

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. Howell Chevrolet Co.

(Signature or name of addressee)

2. E. Casselman.

(Signature of addressee's agent—Agent should enter addressee's name on line One above)

Date of delivery: 2-1-50.

January 31, 1950.

Howell Chevrolet Company,
1000 S. Brand Blvd.,
Glendale, California.

Attention: Mr. Jackson Howell.

Dear Mr. Howell:

Please be advised that the International Association of Machinists, District Lodge 727, represents a majority of your mechanics, lube men, parts men, body and fender men, painters, service mechanics, maintenance men and working foremen employed at your shop located at 1000 S. Brand Blvd., Glendale, California.

(Testimony of D. A. Gordon.)

Therefore, we request recognition for the purpose of representing the employees in the above-described bargaining unit in regard to hours, wages, working conditions and other conditions of employment.

We desire a meeting for the purpose of negotiating a collective bargaining agreement at your earliest possible convenience. Upon failure to grant such recognition and conference, petitions for Certification of Representation will be filed with the National Labor Relations Board.

Very truly yours,

D. A. GORDON,

Organizer, District 727, I.A.M.

DAG:sl

cc: R. M. Brown, G.V.P.

L. E. Poesnecker, G.L.R.

John Snider, President, District 727.

Admitted November 1, 1950.

Trial Examiner Myers: While we are at it, Mr. Nicoson, I notice in your answer you deny that the International Association of Machinists, District Lodge 727, is a labor organization within the meaning of the Act. Do you press your denial?

Mr. Nicoson: Oh, I think we might stipulate that it approximates a labor organization within the meaning of the Act.

Trial Examiner Myers: Very well.

(Testimony of D. A. Gordon.)

Mr. Nicoson: We stipulate that the union is a labor organization within the meaning of the [218] Act.

* * *

Trial Examiner Myers: Now, was any answer made to either one of these letters, Mr. Nicoson?

Mr. Nicoson: General Counsel's 24-A is an answer to 24.

Trial Examiner Myers: Oh, I see. But no answer was made to General Counsel's Exhibit No. 23; is that right?

Mr. Nicoson: That is correct. [220]

* * *

(The document heretofore marked General Counsel's Exhibit No. 31 for identification was received in evidence.)

* * *

GENERAL COUNSEL'S EXHIBIT No. 31

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.
Home Address—St.: 3032 Sierra St.

City: Los Angeles.

Tel. No.: CA 19827.

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-

(Testimony of D. A. Gordon.)

tive Bargaining Agent with respect to wages, hours of employment, and other conditions of employment, in accordance with the provisions of the National Labor Relations Act.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 30, 1950.

/s/ PHILIP CABALLERO.

(Signature of Employee.)

PHILIP CABALLERO.

(Please Print Name.)

Admitted November 1, 1950.

EDWARD M. SKAGEN

a witness called by and on behalf of the General Counsel; being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nutter:

Q. Mr. Skagen, what is your occupation?

A. I am a Grand Lodge representative of the International Association of Machinists. [236]

Q. And what are your duties?

(Testimony of Edward M. Skagen.)

A. My duties are the preparation, handling of cases before the National Labor Relations Board, and other matters pertaining to the official duties of representatives of the International Association of Machinists.

Q. Do you engage in organizing work in the union?

A. I attend various organizational meetings, and I write organizational literature on occasions.

Q. And have you attended organizational meetings in District Lodge 727? A. I have. [237]

(The document heretofore marked "General Counsel's Exhibit No. 32 for identification was received in evidence.) [239]

GENERAL COUNSEL'S EXHIBIT No. 32

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.
Home Address—St.: 1316 Mohawk St.
City: Los Angeles.
Tel. No.: DU 40595.

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,

(Testimony of Edward M. Skagen.)

in accordance with the provisions of the National Labor Relations Act.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 30, 1950.

/s/ KENNETH I. HERRICK.

(Signature of Employee.)

KENNETH I. HERRICK.

(Please Print Name.)

Admitted November 1, 1950.

• • •

(The document heretofore marked General Counsel's Exhibit No. 26 for identification was received in evidence.) [240]

GENERAL COUNSEL'S EXHIBIT No. 26

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.

Home Address—St.: 311 E. Colorado St.

City: Glendale.

Tel. No.:

hereby authorize the International Association of

Machinists to represent me as my exclusive Collective Bargaining Agent with respect to wages, hours of employment, and other conditions of employment, in accordance with the provisions of the National Labor Relations Act.

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 30, 1950.

/s/ BOYCE E. SKELTON.

(Signature of Employee.)

BOYCE E. SKELTON.

(Please Print Name.)

Admitted November 1, 1950.

CLAUDE LEONARD

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nutter: [246]

* * *

Q. Mr. Leonard, I show you an authorization card that is marked General Counsel's 34 for identification, and ask you if you can identify that?

A. Yes, sir.

Q. What is that?

(Testimony of Claude Leonard.)

A. That is an authorization card signed by Henry Gobelman. That was February 1, I believe.

Q. I notice there is no date on there,——

A. No.

Q. ——Mr. Leonard. Now, can you tell me where this was signed and the circumstances?

A. The reason I recall it is that it was the day after I was over there and received the other fellow's. [247]

. . .

(The document heretofore marked General Counsel's Exhibit No. 34 for identification was received in evidence.)

Q. (By Mr. Nutter): Now, Mr. Leonard, I have had marked for identification General Counsel's Exhibit No. 35. I show you this authorization card, and I ask you if you can identify that?

A. Yes, that is an authorization card signed by Joseph F. Price. He was a mechanic working at Howell Chevrolet. His stall was next to mine.

Q. And when did he sign this?

A. January 30, 1950.

Q. Did you see him sign this? I know this is printed down here.

A. Yes, this is printed down here.

Q. Did you see him print it?

A. He printed it out.

Q. I notice this card is filled out up here. Did you fill this out?

A. I filled it out there. I remember the day. He was busy; his hands were all dirty, and I asked

(Testimony of Claude Leonard.)

him about it, and he said, "Go ahead and fill it out, and I will sign it." [249]

Q. What time of day was this?

A. In the morning.

* * *

(The document heretofore marked General Counsel's Exhibit No. 35 for identification was received in evidence.) [250]

GENERAL COUNSEL'S EXHIBIT No. 35

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No., Clock
No., Shift No., Plant No.

Home Address—St.: 905½ E. Chevy Chase.

City: Glendale.

Tel. No.:

hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way.

(Testimony of Claude Leonard.)

Date: Jan. 30, 1950.

/s/

(Signature of Employee.)

JOSEPH F. PRICE.

(Please Print Name.)

Admitted November 2, 1950.

JOSEPH ROSE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nutter:

Q. Mr. Rose, were you employed at Howell Chevrolet? A. I was.

Q. Can you tell us when that was?

A. Well, I don't remember the exact dates.

Q. Approximately?

A. But approximately four months, I should say.

Q. In what year?

A. Probably February was the time I left there, their employment.

Q. Of what year, February of what year? [252]

A. '49.

(Testimony of Joseph Rose.)

Q. 1949?

A. Yes; 1949, yes. It was this year.

Q. This year is 1950. A. '48 and '49.

Trial Examiner Myers: When did you leave?

Q. (By Mr. Nutter): This year is 1950.

A. Well, I would say approximately February of this year.

Q. That is 1950.

A. Yes, I got my dates crossed up.

Q. What were your duties there?

A. I was metal mechanic.

* * *

Q. (By Mr. Nutter): Mr. Rose, I show you this card marked General Counsel's Exhibit No. 36 for identification, and call your attention to the signature there. Can you tell me what that is?

A. That is my signature; that is the card I signed with the union.

Q. And did you fill out the card?

A. I did.

Q. On what date did you fill it out?

A. On the date that is marked there.

Q. January 31st? [253] A. January 31st.

Q. 1950? A. 1950.

Trial Examiner Myers: Did you sign it on that date?

The Witness: I did.

* * *

(The document heretofore marked General Counsel's Exhibit No. 36 for identification was received in evidence.) [254]

(Testimony of Joseph Rose.)

GENERAL COUNSEL'S EXHIBIT No. 36

**Authorization for Representation under the
National Labor Relations Act**

I, the undersigned, employee of Howell Chev. Co.,
employed at Glendale, Calif., Dept. No. Mech., Clock
No., Shift No., Plant No.
Home Address—St.: 2346 Flower Pl.
City: Los Angeles.

I hereby authorize the International Association of
Machinists to represent me as my exclusive Collec-
tive Bargaining Agent with respect to wages, hours
of employment, and other conditions of employment,
in accordance with the provisions of the National
Labor Relations Act.

The full power and authority to act for the under-
signed as described herein supersedes any power
or authority heretofore given to any person or
organization to represent me.

This does not obligate me financially in any way.

Date: Jan. 31, 1950.

/s/ JOSEPH ROSE.

(Signature of Employee.)

JOSEPH ROSE.

(Please Print Name.)

Admitted November 2, 1950.

* * *

[Handwritten Signature]

BOYCE SKELTON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nutter:

Q. Mr. Skelton, were you employed at the Howell Chevrolet? [256]

Q. Are you employed there now? A. No.

Q. When were you last employed there?

A. I don't remember the exact date. I think it was about four months ago.

Q. Four months ago? A. Yes.

Q. And were you employed there at the time of the election in June of 1950? A. Yes.

Q. And when did you first go to work at Howell?

A. Well, that was in 1949; I think it was in November.

Q. And what were your duties at Howell Chevrolet? A. Oh, delivery, tow truck.

Q. Pardon? A. Delivery and tow truck.

Q. You delivered automobiles and you drove the tow truck, is that it? A. That is right.

Q. Now, do you know Mr. Howell?

A. Yes, I do.

Q. And prior to the election in 1950, did Mr. Howell speak to you at all about the union?

A. Well, just one time.

Q. And when was that? [257]

(Testimony of Boyce Skelton.)

A. That was before the election. I don't know how long before—two weeks, a week, I don't know.

Q. And whereabouts was it that he spoke to you?

Trial Examiner Myers: Do you mean about a week or two before the election?

The Witness: Yes, something like that.

Q. (By Mr. Nutter): And whereabouts did you have this conversation?

A. This was just there on the grounds.

Q. Grounds of the company? A. Yes.

Q. And could you tell us about where it was?

A. You mean whereabouts on the grounds?

Q. Yea. Where were you customarily employed?

A. It was on the parking lot there that they have.

Q. A parking lot; and was there anyone else present besides yourself and Mr. Howell?

A. No.

Q. Now, will you tell what was said at this conversation?

A. Oh, it was just that if the union was defeated, why, everybody would get a raise. [258]

. . .

Q. How did the conversation open up?

A. I don't remember all that was said. It was too long ago. That was the whole point in the conversation.

Q. Did you say anything in answer?

A. Well, yes, but I don't remember what I said.

(Testimony of Boyce Skelton.)

Q. Well, do you recollect anything else of the conversation?

A. No, we just talked for just about a minute, was about all.

Q. Well, did he approach you or did you approach him?

A. Well, we were walking along and he said, "Good morning," or something like that; and he stopped, and that is when we started talking.

Q. Do you know Mr. Borden?

A. Yes, I do—service manager at Howell—yes.

Q. Did he ever talk to you about the union prior to the election?

A. Not personally, no.

Q. Well, did he ever talk to you in a group of other men?

A. Yes.

Q. And when was that?

A. Well, I don't know; about the same length of time before the election, I guess.

Trial Examiner Myers: You mean about a week or two before [259] the election?

The Witness: A week or two before, somewhere around there.

Q. (By Mr. Nutter): And whereabouts was this conversation? Where did it take place?

A. It was at the company.

Q. And whereabouts at the company?

A. Well, it was on the grounds somewhere. I don't remember. It was either in the service department or on the grounds.

(Testimony of Boyce Skelton.)

Q. By the grounds you mean the parking lot?

A. The parking lot, yes.

Q. And who were present?

A. Well, I can't say because I don't remember.

Q. Could you tell me approximately how many men were present?

A. Oh, three or four maybe—five, I don't know.

Trial Examiner Myers: Were these three or four or five people employees of Howell?

The Witness: Yes.

Q. (By Mr. Nutter): And do you remember what time of day it was? A. No, I can't.

Q. Now, what did Mr. Bordeau say?

A. Well, I imagine it—

Trial Examiner Myers: Do not tell us what you imagine.

Q. (By Mr. Nutter): Tell us what he said.

Trial Examiner Myers: Tell us what you remember. [260]

The Witness: Oh, about the same thing that I said before there.

Mr. Nicolson: Move to strike the answer as not responsive.

Trial Examiner Myers: Strike the answer. You have to tell us just what you remember what Mr. Bordeau said, and what the other people said. Just try to recollect what there was said.

The Witness: I don't remember the exact words.

Trial Examiner Myers: I just said tell us what you remember.

(Testimony of Boyce Shelton.)

Mr. Nutter: In substance what he said.

Trial Examiner Myers: Of course you cannot remember the exact words.

The Witness: Well, it all boiled down that if the union was defeated—

Mr. Nicolson: Object to what it all boiled down to as a conclusion of the witness.

Trial Examiner Myers: Strike that. Now, without going through those formalities, just try to tell us what you remember he said. We know you cannot tell us exactly what he said.

The Witness: Well, it added up to—

Trial Examiner Myers: Do not say "it added up to" or "boiled down," or this and that.

The Witness: Well, he said that if the union was defeated that everybody would get a raise.

Q. (By Mr. Nutter): Anything else said? [261]

A. No.

Q. Well, did this group of employees break up then after this, or what happened?

A. Yes, it was just a conversation.

Q. How did the employees happen to gather there at that time?

A. Just—I don't know. The employees gather when there isn't much to do; they just stand around and talk. [262]

Cross-Examination

By Mr. Nicolson:

Q. Now, this time that you spoke about Mr.

(Testimony of Boyce Skelton.)

Bordeau having something to say, that was an occasion when the men were just standing around shooting the breeze when you did not have anything to do; is that right? A. That is right.

Q. And that happens when in slack business the boys hang around and start talking and they come around and join in the conversation? That is one of those such days? A. Right.

* * *

Q. Now, how did that subject come up?

A. Well, there was a lot of talk at that time about the coming election, and when anybody get together, you know, that is what they usually talked about. So that is how the subject [268] was brought up.

Q. Was there some talk about the election in this group that day?

A. Yes, I believe there was.

Q. Was that before or after Mr. Bordeau made this statement? A. Well, it was before.

Q. Is it not a fact that Mr. Bordeau told you that the company could not give you an increase because of the pending of the election? Is that right? He said something like that, did he not?

A. I don't remember.

Q. And he also said that if the union won the election then the increases would be up to the union? A. Yes, that is right.

Q. And he said in the alternative that on the other hand if the union did not succeed, then the

(Testimony of Boyce Skelton.)

company could be free to give such deals to the men as it wanted to? A. That is right.

Q. And that is what he said?

A. That is right.

Q. Now, the reporter does not get the nodding of your head.

A. I said, "That is right." [269]

. . .

EDWARD DALY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

. . .

Direct Examination

By Mr. Nutter:

Q. Mr. Daly, where are you employed?

A. For Howell Chevrolet.

Q. And how long have you worked at the Howell Chevrolet?

A. I work there altogether about nine [271] years.

. . .

Q. (By Mr. Nutter): I show you a card, Mr. Daly; is that your signature? A. Yes.

Q. Did you sign that?

A. Yes—this is to find out what it is all about.

Trial Examiner Myers: Did you sign that card?

The Witness: I didn't sign the second one, and I didn't pay a penny in the union. I just signed

(Testimony of Edward Daly.)

that that if the union happened to take over the place, I have to go with them. Otherwise, I have to get out.

Q. (By Mr. Nutter): Did you sign that January 31st?

A. Yes—that is a long while back.

Trial Examiner Myers: Did you sign that card on January 31, 1950?

The Witness: 1950, yes. [272]

(The document heretofore marked General Counsel's Exhibit No. 37 for identification was received in evidence.) [273]

GENERAL COUNSEL'S EXHIBIT No. 37

Authorization for Representation under the National Labor Relations Act

I, the undersigned, employee of Howell Chevrolet Co., employed at Fender & Body, Dept No....., Clock No....., Shift No..... Plant No.....
Home Address—St.: 1250 4th Ave.
City: L. A.
Tel. No.:

hereby authorize the International Association of Machinists to represent me as my exclusive Collective Bargaining Agent with respect to wages, hours of employment, and other conditions of employment, in accordance with the provisions of the National Labor Relations Act.

(Testimony of Edward Daly.)

The full power and authority to act for the undersigned as described herein supersedes any power or authority heretofore given to any person or organization to represent me.

This does not obligate me financially in any way.

Date: 1/51.

/s/ ED DALY.

(Signature of Employee.)

ED DALY.

(Please Print Name.)

Admitted November 2, 1950.

Mr. Nutter: I want to make one request I made of Mr. Potruch, whether he will stipulate that the pay roll of February 1st was also for January 31, 1950.

Trial Examiner Myers: 1950?

Mr. Nutter: 1950. I think that is General Counsel's Exhibit No. 8.

Mr. Potruch: We so stipulate.

Trial Examiner Myers: That the same persons were employed on January 31, 1950, whose names appear on that list submitted by the company, headed, "Feb. 1, 1950"? Is that right?

Mr. Potruch: That is right, sir.

Trial Examiner Myers: Is that acceptable to you, Mr. Nutter?

Mr. Nutter: It is acceptable. [275]

Mr. Nicoson: At this time respondent would like to renew its motion previously made with respect to the lack of jurisdiction of the National Labor Relations Board over this Respondent on the same grounds as previously stated.

Trial Examiner Myers: I will reserve decision.

Mr. Nicoson: We further move that the complaint be dismissed in its entirety on the ground that there is no sufficient and substantial evidence to sustain the allegations of the complaint.

Trial Examiner Myers: Motion denied, that is, to the issues involved here, except as to the motion with respect to jurisdiction.

• • •

JACKSON HOWELL

a witness recalled by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nicoson: [276]

• • •

Q. What is your business or occupation?

A. President of Howell Chevrolet Company, Glendale.

Q. Where is Howell Chevrolet Company located?
A. 1000 South Brand Boulevard.

(Testimony of Jackson Howell.)

Q. What is the Howell Chevrolet Company?

A. Automobile agency.

Q. Is that a corporation? A. Corporation.

Q. Were you president of that corporation during the period of 1950 up to now?

A. Yes, sir.

Q. And were you also president of the corporation on January 1, 1950? A. Yes.

* * *

Q. When was the first time that you had learned that there was any union activity among the employees of your company, sir?

A. When I was served with notice by the National Labor Relations Board. I don't know which came first, whether the union activities or the one from the National Labor Relations Board; but whichever came first, that was the first notice I had.

Q. I show you a document which is in evidence as General [27] Counsel's Exhibit 23, and ask you to examine it and state if that is one of the notices you received from the union and to which you have just referred?

* * *

Q. And then did you thereafter issue any instructions to any of your employees or supervisors?

A. Yes. Upon the advice of Mr. Potruch I instructed Chub Bordeau, our service manager; Bob Roberts, our used car manager; Jerry Whitten, our parts manager.

Q. What instructions did you issue to them?

(Testimony of Jackson Howell.)

A. That there was to be as a result of the action no partiality shown in any direction, no discrimination as far as any of the employees were concerned. No one was to be fired, and our position would remain absolutely neutral in the entire matter.

Q. So far as you know, have those instructions been carried out to the letter?

A. To the best of my knowledge, they have.

Q. Did you issue any other instructions to your supervisors [278] other than what you have just related?

A. Well, on numerous occasions from the original date, I checked with the department heads, conferred with them, and emphasized and reemphasized the point that none of the people that were obviously in the union were to be discriminated against in any manner, shape or form.

Q. And by those obviously in the union you meant those that had been seen wearing union buttons, is that correct?

A. Had been seen wearing union buttons.

Q. There has been some testimony about Mr. Potruch making a talk or a speech to the employees of your company. Do you know anything about that?

A. Yes, I was there at the time of the speech, the time the initial speech was made.

Q. Do you know which of your employees were in attendance?

A. All of the employees that were at work that

(Testimony of Jackson Howell.)

day that were employed in the shop—the main shop, the paint shop, the body shop, the used car refinishing, the lube rack, and the used car mechanics and the parts men.

Q. Now, is it a fact that these were all assembled in one place?

A. One place in the rear of the shop.

Q. And about what time of day did that occur?

A. I think it occurred before noon.

Q. And do you know on what date it [279] occurred?

A. No, I don't. I don't recall the date.

Q. What is your best recollection as to the date?

A. I believe it was in March, March or April.

Q. At that time did you have anything to say to the employees?

A. Yes, yes, I did.

Q. What did you say?

A. I introduced Mr. Potruch as the attorney for Howell Chevrolet. I told the men that no doubt they, that many of them, were familiar with the fact that there were some union activities going on and that I had hired Mr. Potruch, of the firm of Carter & Potruch, to represent me and that I wanted him to talk to them to explain the company policies.

Q. Did you have anything else to say at that time?

A. At the conclusion of his talk I adjourned the meeting.

Q. Those are the only things that you said dur-

(Testimony of Jackson Howell.)

ing the entire time the employees were assembled there? A. That is right.

Q. I take it Mr. Potruch did make some remarks to the employees? A. He did.

Q. Will you now state to us best as you can recall what Mr. Potruch said at that time and place?

A. Well, I don't know whether I have this in chronological order or not, but he told the men that there was no difficulty as far as Howell Chevrolet was concerned with the union; that Howell Chevrolet had nothing against the union; that the unions [280] had, in his opinion, a definite place in the picture. He told them that I felt and he felt that we didn't, being small merchants, come under the jurisdiction of the National Labor Relations Board; and then he went into some detail in that connection. Then he covered three phases of strike situations, three different types of strikes. I don't recall any of the details. My thinking was that it was impartial.

Mr. Nutter: Objection, Mr. Examiner. I object to his opinion as to the speech.

Mr. Nicoson: That may go out.

Trial Examiner Myers: Do not give us your conclusion. You were asked what Mr. Potruch said.

The Witness: He said further that he felt that the employees should in cases of difficulty try and work out their difficulties with their employer. If they endeavored to do that on a fair and honest

(Testimony of Jackson Howell.)

basis and were not able to get anywhere, I recall very vividly he said if he were in their position he would hang the employer.

He said further that we intended to stand on the position that we did not come within the jurisdiction of the National Labor Relations Board and that he would personally fight the case to my last [281] dollar.

• • •

Q. Now, do you recall whether Mr. Potruch said anything to the effect that the union would never get a contract with the Howell Chevrolet Company?

A. I am positive he did not say that.

• • •

Q. (By Mr. Nicoson): Did you have a conversation with Mr. Ed Daly? A. Yes, I did.

Q. That is the same Mr. Daly that was on the stand here this morning? [282]

A. That is correct.

Q. About when did you have your conversation with Mr. Daly?

A. It was about two weeks before the National Labor Relations Board conducted the vote.

Q. Where was the conversation?

A. In the body shop just opposite his stall.

Q. That is where Mr. Daly works?

A. That is right.

Q. Was there anyone there besides you and Mr. Daly? A. Not at the outset.

(Testimony of Jackson Howell.)

Q. Was there anyone before the conversation was concluded? A. Yes.

Q. Who was that? A. Smith.

Q. So during the conversation there were just you, Mr. Daly and later on Mr. Smith?

A. That is right.

Q. Will you now tell us what you said to Daly, what Daly said to you, what you said to Smith, if anything, and what he said to you? Give us the full conversation and who said it.

A. Well, I was passing by and as I frequently do, when Ed is looking, I stopped and talked to him.

Trial Examiner Myers: That is Daly?

The Witness: That is Daly, Ed Daly. I said, "How are you getting along, Ed, and how is the job coming?" et cetera. [283]

And Ed stopped and said, "How about this union thing, and when are we going to get a raise?"

And I said, "Ed, I can't talk to you about it. I can't answer your question because I don't know. You were at the meeting when Mr. Potruch spoke originally, when he said that there could be no cuts in salary, no discharges, no increases. So until the matter is disposed of, I am not in a position to answer your question."

During that conversation, Smith came into the picture.

Q. (By Mr. Nicoson): Do you know at what juncture this Mr. Smith came into the picture?

(Testimony of Jackson Howell.)

A. When Daly asked for the increase, when he asked the question as to when they were going to get the increase.

Q. Mr. Smith testified that he had a conversation with you at about this time and place, and he said in substance that you said to him that if the union came into the plant, there would be a strike. Did you make any such a statement?

A. I did not.

Q. Mr. Smith further testified that at that time and place that you said to him that if the union was voted out, the boys in the body shop would get a 50 per cent commission the first month. Did you say that?

A. I did not. I had no conversation with Smith. My conversation was with Daly; Smith was the spectator.

Daly then brought up the point that the Pontiac dealer down [284] the street had just recently gone to 50 per cent on his metal work for his metal men and for his painters, and he, by God, couldn't understand why we weren't paying it. It was a little difficult to make Ed understand and I rehearsed the thing with him again, that we couldn't move in any direction, decreases or increases; and that was the complete text of my discussion when Smith was present.

Q. Now, there has been some testimony here about a meeting that was held in the Mayfair Hotel in Glendale. Is there a Mayfair Hotel in Glendale?

A. There is not.

(Testimony of Jackson Howell.)

Q. There is a Mayfair Supper Club?

A. That is right.

Q. And was that where the meeting was held?

A. That is where the meeting was held.

Q. And do you recall about when the meeting was held?

A. The meeting was held on a Monday evening following the election.

Q. About how long after the election would you say?

A. I think it was three or four days.

Q. And who was present at this meeting?

A. All of the shop employees. I mean by that the body shop, the mechanics, the washers, the lubrication men, the parts department, the used car refinishing department, some of the new car salesmen, some of the used car salesmen; the [285] department heads, including the sales manager and our office manager.

Q. Did you have something to say there that night?

A. Yes, I did.

Q. What did you say?

A. Well, at the conclusion of dinner I told the men that I had some announcements to make to them. That, as they all knew, we had just gone through the election, and as far as I was concerned, I had forgotten about it. I wanted them to forget about it. I hoped that there would be no hard feelings either toward myself or the union, that I harbored no hard feelings toward them.

(Testimony of Jackson Howell.)

I said I hoped further there would be no hard feelings amongst the people in the organization. I said, as far as the activity is concerned, I have completely forgotten about it. There will be no discriminations against anybody. I want you people to forget about it."

I said that I was announcing a change in our flat rate schedule from \$3.00 to \$3.50 an hour; that we were changing the pay of the mechanics on the line and all of the people in the shop, the shop proper, that were on a percentage basis, from 40 to 45 per cent. The metal men to 50 per cent, the painters to 50 per cent. They were getting 50 per cent.

Trid Examiner Myers: Those you raised to 50, were they raised from 40?

The Witness: From 40 to 50. I further announced a [286] \$68 guaranteed work week.

• • •

Q. All right.

A. I recall I closed the meeting with the thought that our business had been interrupted, disturbed; that our livelihood, including theirs, was dependant upon the public, and that I hoped that we could have a good happy organization because only through a happy organization could we give good service and have good public relations.

With that the meeting was adjourned.

Q. Is this the first time you ever had a meeting like this? A. No, sir.

Q. Have you had them before?

A. Yes.

(Testimony of Jackson Howell.)

Q. Over what period of time?

A. Well, at no stated intervals. We have had meetings around the holidays generally, and some special occasions something would come up, we would have an organization meeting. [287]

Q. There has been some testimony in this record that you have stated that if the shop went union you would close it up. Did you ever make such a statement?

Trial Examiner Myers: If he wants to put it in that way, that is all right. Now, will the reporter please read the question to the witness?

(Question read.)

The Witness: The answer is that I definitely did not.

Q. (By Mr. Nicolson): Mr. Hansen, a witness here, testified that he had a conversation with you a few days before the election on the wash rack while Mr. Hansen was putting on his boots, at which time you asked Mr. Hansen for the vote in favor of the plant. Did you do that? A. I did not.

Q. Mr. Hansen further testified that he said he would do his best. Did he say that?

A. Not to my knowledge. [289]

Q. Mr. Hansen also testified that at the same time and place you told him that something would be done about a raise in 30 days. Did you say anything like that?

A. I did not. He inquired about a raise, and I

(Testimony of Jackson Howell.)

told him the same story that I had told Ed: That with the situation as it stood, there could be no raises, there could be no decreases, there could be no firing, that he could not have an answer on that until after the election.

Q. Mr. Hansen also testified that at that time and place that you stated to him that you would give him a raise if he would vote against the union. Did you say anything like that? A. I did not.

Q. Mr. Boyce Skelton, a witness for the General Counsel, has testified here that at one time he spoke to you about the union before the election, and probably two or three weeks before, that the conversation took place on the company's ground at the parking lot at which time you said to him that if the union was defeated the boys in the body shop would get a raise. Did you say that?

A. I did not.

Q. Did you say anything like that to him?

A. No, I did not.

Q. Did you have any such conversation with him? [289]

The Witness: No.

Q. (By Mr. Nicolson): Do you have any knowledge of the layoff of Mr. Claude Leonard?

A. I do.

Q. What is that knowledge?

A. Mr. Bordeau came to me prior to his layoff and explained to me that there wasn't sufficient

(Testimony of Jackson Howell.)

work in the shop to support a separate brake department and a front end and frame straightening department. It was his opinion that the two departments should be consolidated.

Q. Did he so state? A. He so stated.

Q. Carry on. [290]

A. Herrick had been running the front-end department and the frame-straightening department. Leonard has been working in the brake department. Leonard, in Bordeau's opinion, was not capable of operating the frame straightening machine.

Q. Did he so state?

A. He so stated; and he made the recommendation to me that Leonard be discontinued and Herrick take over the two departments.

Q. Did you have anything to say about that?

A. I agreed with him.

Q. And was that done—

A. Subsequently.

Q. —if you know?

A. Subsequently.

Q. Now, when did this conversation take place?

A. Well, it was prior to Leonard's dismissal. I don't know the date.

Q. Do you know how long before?

A. It was about three days before his dismissal.

Q. Since Mr. Leonard has been laid off, have you hired any other brakeman to take his place, or do you know—

A. Not to my knowledge.

Q. Did you have conversations with anyone outside of Mr. Daly about raises, requests for raises?

(Testimony of Jackson Howell.)

A. I had a number of men all through that period asking me [291] about raises.

Trial Examiner Myers: During what period?

The Witness: During the period of from the time we were notified early in February and up to the date of the election in June.

Q. (By Mr. Nicolson): What did you answer in response to those requests?

A. My answer in all cases was the same: That we could not commit a violation of the National Labor Relations Act, that we could not do anything to prejudice the union's position, that we could not give any increases, that we could not decrease the wage, that it had to remain status quo, that no one would be fired.

* * *

Cross-Examination

By Mr. Nutter: [292]

* * *

Q. (By Mr. Nutter): Well, after Mr. Leonard was discharged, who took his place? [294]

* * *

The Witness: No one took his place.

Q. (By Mr. Nutter): Did anyone do his work?

A. Yes.

Q. Who? A. Herrick.

Q. Did anybody assist Mr. Herrick in doing any of Mr. Leonard's work?

A. Not on our payroll.

Q. Well, did anyone assist him?

(Testimony of Jackson Howell.)

A. On occasion.

Q. Who was that?

A. I don't know the man's name.

Q. Did you give Mr. Herrick permission to have another man come in to assist him?

A. I did not.

Q. Who did?

A. Mr. Bordeau.

* * *

Q. You saw some men wearing union buttons out in the shop, is that right?

A. Yes. [295]

Q. And you saw Claude Leonard wearing a union button, did you not?

A. Yes, I think so.

Q. Is it your sworn testimony that you did not discuss a pay raise with George Smith on the date that you discussed one with Ed Daly?

A. That is correct. [296]

* * *

Redirect Examination

By Mr. Nicoson:

Q. Did you see Mr. Herrick wearing a union button?

A. Yes, I did.

* * *

ROWLAND BORDEAU

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [297]

Direct Examination

By Mr. Nicoson:

Q. What is your business or occupation, Mr. Bordeaux?

A. I am a service manager at the Howell Chevrolet Company.

Q. Are you sometimes referred to as Chub?

A. Yes, sir.

Q. C-h-u-b, is that correct?

A. Yes, that is a nickname.

Q. How long have you been service manager for Howell Chevrolet?

A. Since the 10th of May, 1949.

Q. As service manager what are your duties?

A. My duties are to run the repair department, supervise the service department and paint shop and trim shop and lube rack and body shop. [298]

Q. What is the body shop?

A. Where is the body shop?

Q. What is it?

A. The body shop is where we repair wrecked automobiles.

Q. Fenders?

A. Repair collisions. That is right, straightening fenders and bodies.

(Testimony of Rowland Bordeau.)

Q. Fix doors and things of that nature?

A. Yes.

Q. There has been some testimony here about used car mechanics. Do you have anything to do with them?

A. No, sir.

Q. I will ask you if on or about February 1 you saw certain of your employees wearing union buttons?

A. Yes, sir.

Q. Will you name those that you now recall as having been seen by you wearing buttons as of that date?

A. George Kirkland, Lee Fitzhugh, Claude Leonard, Phil Caballero, Kenny Herriek, Richard Wells.

Q. Is that all that you recall?

A. I believe one body man, but I do not remember his name.

Q. All right. At or about that time did you have anything to say to these employees about their wearing the union button?

A. No.

Q. Did you discuss it with them or did they discuss it with [299] you?

A. No, sir.

Q. Was the wearing of the union buttons the first time that you were aware that there was any union activity in the plant?

A. Yes.

Q. Mr. Leonard has testified here that on one occasion while he was talking with a George Davis in the body shop, that you called to him and told him not to bother the men there, that you did not want any campaigning while on duty. Did any such conversation as that take place?

A. Yes.

(Testimony of Rowland Bordeaux.)

Q. Tell us about it.

A. Well, on several occasions I would look out through the service department and see Claude Leonard talking to the body men. There would be one of the men, maybe two of the men. He would be talking to them, especially a new man that came on the job. At that particular time we had quite a turnover in body repairmen; and each time a new man would go on the job in the morning at 8:00 o'clock, it would be about 8:30 and Leonard would be down there talking to him. And I told him I believe about three times that I did not want him talking to the men between 8:00 and 5:00 o'clock.

Q. Now, at the time that you spoke to Mr. Leonard about this subject, was it during working hours? A. Yes. [300]

Q. Was it at a time when Mr. Leonard was supposed to be working? A. That is right.

Q. Was Mr. Leonard anywhere close to his place of work? A. I would judge about 200 feet.

Q. From the place—

A. Where he was supposed to be working.

. . .

Q. Mr. Leonard said that he was laid off on or about March 31, 1950. Is that fact? A. Yes.

Q. Did you have anything to do with the layoff?

A. Yes.

Q. What did you have to do with it? [301]

A. I was the man that done it.

Q. Did you discuss the matter with Mr. Howell prior to it? A. Yes.

(Testimony of Rowland Bordeau.)

Q. What led you to take that particular act?

A. Well, I had very little brake work at that time, and very little frame work and a little front-end work. I didn't have enough for two men to keep two departments going. I decided to put—consolidate the two departments.

And I felt that Herrick was the best man of the two, due to the fact that he was a frame man and a front-end man and Leonard was not. He is also a good brake man.

Q. You had worked with Mr. Herrick, had you?

A. Yes, sir.

Q. And had an opportunity to observe his qualifications in the matter?

A. Yes, sir.

Q. And in the manner he handles his work?

A. Yes, sir.

Q. Did you reach any conclusions as to the relative qualifications of Mr. Herrick and Mr. Leonard with respect to brake work?

A. Mr. Herrick had turned out one or two jobs, complete brake jobs, while Leonard was there, when he was working on another job; and he turned out a much better job than Claude Leonard. [302]

Q. While you were there, did Mr. Leonard work on any front end?

A. No, sir.

Q. Did you ever attempt to get Mr. Leonard to work on front ends?

A. On two occasions.

Q. Did you ask him to do so?

A. Yes, sir.

Q. Did he make a reply?

A. He said that he did not want to do any front-

(Testimony of Rowland Bordeaux.)

end work. He did not know anything about it and he was a brake man.

Q. After that did you ask Mr. Leonard to do any front-end work? A. No, sir. [303]

Q. What did you hear Mr. Potruch say while you were there?

A. Well, the few minutes that I was in there, one time that I was in there, he had a sample ballot and he was explaining it to them and showing them how to vote, how to mark the ballot, with an X, and I believe he read a little paragraph of some book of the NLRB, something to that effect. I do not recall it too well.

Q. Prior to Mr. Leonard's layoff, where did he work? A. He worked in the back shop.

Q. Did he have a stall? A. Yes, sir.

Q. And was there any machinery in that store particularly adaptable to brake work?

A. Yes.

Q. What was there?

A. Brake drum turning lathe. [305]

Q. Anything else? A. No.

Q. After Mr. Leonard was laid off was anything done with that turning lathe?

A. Yes, sir, moved.

Q. Where was it moved to?

A. It was moved out in the front-end department.

(Testimony of Rowland Bordeau.)

Q. And would that have any relation to where Mr. Herrick had been working? A. Yes.

Q. And what is that relationship?

A. Well, it was moved right alongside of the front-end machine.

Q. That is adjacent to Mr. Herrick's previous location of work? A. Yes, sir.

Q. And why was that done?

A. Well, it was for convenience and also I wanted to get the noise out of the shop. It makes quite a racket when you are turning the drum.

Q. Now, there has been some testimony here about somebody helping Mr. Herrick. Do you know anything about that? A. Yes, sir.

Q. Tell us what you know about that.

A. Well, on a few occasions we have had a job come out of the shop, and before the metal men could finish up with it, [306] the frame had to be straightened, and it would come out at such time when Herrick was busy with brakes, that he would call in this friend of his. I don't know the man's name; we didn't pay the man. I understand from Mr. Herrick that this man owed him some money and still owes him some money.

Mr. Nutter: I object to this testimony.

Mr. Nicolson: I will connect it up later.

Mr. Nutter: I move that it be stricken at this time.

Trial Examiner Myers: Strike out the last.

Q. (By Mr. Nicolson): Were you told anything by Mr. Herrick about this arrangement?

(Testimony of Rowland Bordeau.)

Mr. Nutter: I object. Mr. Herrick—

Trial Examiner Myers: Overruled. You may answer.

The Witness: I asked Mr. Herrick who this man was he had working for him there, helping him out. And he said it was a friend of his, an old-time mechanic, and he owed him some money. That was the only way he could collect it, to have him come in and help him. The man would work on the frame machines, or he would work on brakes and Herrick would work on the frame machines.

Q. (By Mr. Nicolson): Did that happen often?

A. It happened about four times, I believe, during a period of about three months.

Q. And I believe you stated that Howell did not pay the man's wages? [307]

A. That is right.

Q. Howell Chevrolet Company did not call him to work, is that correct?

A. That is correct.

Q. Did any of the employees at Howell ask you about a raise in pay?

A. Yea.

Q. Name some of the people that did.

A. Bill Schoene asked me on two different times about a raise.

Q. Now, when did he ask you?

A. Two or three weeks before the election.

Q. And where were you and where was he?

A. Right in his stall where he works in the front part of the shop.

Q. Was there anybody else there besides the two of you?

A. No, sir.

(Testimony of Rowland Bordeau.)

Q. What did you say to him and what did he say to you?

A. He asked me—he said, “What is the chance of getting a little bit more money?” He is on a monthly salary, incidentally.

I said, “Bill, we cannot do anything about this salary deal right now. We have got this thing coming up with the NLRB.” And I says, “Nothing can be done about any salaries at all until after this is over with, and then we will find [308] out from Mr. Potruch what can be done.”

Q. Did Mr. Schoene have any reply to make?

A. He says, “That is OK with me.”

Q. And did you have any conversation with any other of the employees out there with respect to a raise?

A. No, sir.

Q. A Mr. George Smith has testified that on one evening he was in the Playhouse Bar and Grill, or whatever it is, in Glendale, at which time you and Kenny Herrick were present, and that at that time and place you and Mr. Herrick were talking about the union, and that during the course of that conversation you told Mr. Herrick that if the union came into the Howell Chevrolet Company that Mr. Howell would close down the shop.

Was anything like that said? A. No, sir.

Q. Did you talk with Mr. Herrick about the union?

A. Yes, sir.

Q. What did you say to him and what did he say to you?

(Testimony of Rowland Bordeau.)

A. Well, I was in there first. He came in and sat down beside me, and he said, "Chub, what about this union? What are we going to do about this union deal?"

And I said, "Well, Kenny, there is nothing to do about it but use your head. You do whatever you see fit, whatever you think is best for you." [309]

Q. Was there anything further then in that conversation between you and Mr. Herrick or between you and Mr. Herrick and Mr. Smith or between you and Mr. Smith or anyone else?

A. No, sir; nothing that pertains to this.

Q. At the occasion of one of the second meetings of Mr. Potruch, Mr. Smith testified that you told about working in the shop in San Francisco and that you said that the union would not do the employees any good, that you ran a union shop for about 14 years and that all you had to do to get the man you wanted was to give the union business agent a fifth of whisky for a \$10.00 bill. Did you say anything like that? A. I did not.

Q. Anything at all like that?

A. No, sir. I told them I ran a union shop for 12 years.

Q. Is it not a fact that at one time you were a member of the Machinists Union?

A. That is right.

Q. Mr. Smith testified here that at the time he left Howell Chevrolet Company that he voluntarily resigned. Do you know anything about his leaving Howell Chevrolet? A. Yes.

(Testimony of Rowland Bordeaux.)

Q. Will you tell us what you know?

A. Well, on numerous occasions I found him on the job drunk in the middle of the afternoon, he and another fellow. And one afternoon I went out there, and they were both drunk. Each [310] had a separate automobile. And I fired them both. And they were so drunk that they were just stupid enough to just hang around.

. . .

Q. Prior to the discharge of Mr. Leonard did you have any conversation with him in relation to the quality of his work?

A. Yes, sir.

Q. When did you first have such a conversation with Mr. Leonard?

A. The first day I went to work for Howell Chevrolet Company.

Q. And did you have such conversations later on?

A. Yes, sir.

Q. About how many would you say you had over a period of time?

A. Oh, I would imagine about 10 or 12.

Q. What was the nature of those conversations?

A. Well, the first one was—he was overhauling brake master cylinders without taking them off the car and that cannot be done properly.

Q. Anything else? [311]

A. And on brake relines he wasn't bleeding the lines all the way out. Consequently, the cars were going out and coming back in in a couple of days with no brake pedal.

(Testimony of Rowland Bordeaux.)

Q. Trial Examiner Myers: Who was this?

A. Mr. Leonard.

Q. When did this occur?

A. On different occasions.

Q. Over what period?

A. Between May and the time he was discharged.

Q. May of— A. May of '49.

Q. Over a period of almost a year?

A. That is right.

Q. (By Mr. Nicoson): All right. Now, about the time you came there and had these conversations with Mr. Leonard, did you make any change in the assignment of certain types of brake work?

A. Yes, sir.

Q. What did you do about that?

A. I assigned all of the—not all of them, but about 90 to 95 per cent of the brake adjustments went on the lube rack.

Q. When did you start that?

A. About a week after I went to work there in May of 1949.

Q. And did you change that practice, up to the present time? A. No, sir. [312]

Q. Did you also about that time give additional work to the men on the lube rack?

A. Yes, sir.

Q. What type of work did you give?

A. That was replacing mufflers and tail lights.

Q. Now, why did you assign that type of work to the lube rack?

(Testimony of Rowland Bordeaux.)

A. Well, the primary reason for that was that it speeds up the operation. It gets the customer out of there faster; and all the shops that I ever run before—they always done the brake adjustments on the lube rack. A lot of times the customer has only got 20 minutes or so, and he wants his car lubed and his brakes adjusted, and he has to get down here to Los Angeles to work. So when the car is on the rack it is a lot easier to adjust the brakes which only takes five or ten minutes at the most on a car from a 1939 model up. It just speeds up the operation, that is all, and gives the customer a better service. [313]

. . .

Q. At Howell Chevrolet what is the practice, if any, with respect to assignment of work involving stoplight switches?

A. That is done in the electrical department.

Q. By whom? A. By Doyle Christian.

Q. Is he what is commonly termed the tune-up man? A. Yes.

Q. Now, there are two different types of stoplight switches, are there not?

A. Yes, sir. [316]

Q. Both of those types are assigned to Mr. Christian? A. Yes.

Q. Has that been a standard practice since you have been with Howell Chevrolet?

A. Yes. [317]

. . .

(Testimony of Rowland Bordeau.)

Cross-Examination

By Mr. Nutter:

Q. Mr. Bordeau, do you have a son that works for Howell Chevrolet? A. Yes, sir.

Q. Where does he work?

A. Lubrication department. [318]

• • •

Q. Now, was this man who assisted Kenny Herrick—was his name Grover Burgett?

A. I don't know if that is his name. I never heard his name.

Q. Did you discuss with Mr. Herrick bringing this man in? [321]

A. After he brought him in.

Q. Well, did Mr. Herrick bring him in without consulting you? A. Yes.

Q. Is it your testimony that the flat rate men out there at the plant have the right to bring in people who assist them without consulting you?

A. No, sir.

Q. How did it happen that Mr. Herrick brought this man in without consulting you?

A. Well, he brought him in and when he was on the job I came over and asked him who the man was.

Q. Who did? A. I did.

Q. You mean Mr. Herrick put this man to work—

A. Well, he hadn't actually started to work yet. He just came there one morning with him.

(Testimony of Rowland Bordeau.)

Q. And when was that?

A. I don't remember what date it was.

Q. How long was that after Claude Leonard was discharged?

A. Oh, I would imagine three weeks probably.

Q. Are you sure about that?

A. No, I am not. I said probably.

Q. And when you first saw this man working on the job, what did you say to Herrick? [322]

A. I asked him who the man was, what was going on.

Q. What did he say?

A. He said he was just an old mechanic who was "an old friend of mine who owes me some money, and I am jammed up here with work, and I have to get this frame straightened, and I am going to let him do the rough straightening on this frame."

Q. Now, is it not a fact that this friend of his actually did the frame straightening and Herrick was doing the brake work?

A. No, in two instances he was doing brake work.

Trial Examiner Myers: Who is "he"?

The Witness: This man that Herrick had brought in.

Q. (By Mr. Nutter): Well, is there any reason, since these men were on a flat percentage basis, that Claude Leonard could not do the brake work if the company was overloaded?

A. Claude Leonard wasn't there.

(Testimony of Rowland Bordeaux.)

Q. Well, is there any reason why you could not have retained him if this man was rushed instead of bringing in somebody from the outside?

A. Well, Kenny wanted this man as a means to get the money out of him that he owed him—to get him to help him out.

Q. And is it your sworn testimony that this individual only worked for Herrick to pay off his debts? A. That is right. [323]

* * *

Q. Is this man still assisting Herrick out there occasionally? A. No, sir.

Q. When was the last time he was out [325] there?

A. I do not remember that. I couldn't recall.

Q. And how many times did you see him out there?

A. About four times, four or five times.

Q. Now, when was the first time?

A. About three weeks after Leonard was laid off.

Q. And when was the second time?

A. That is as close as I can remember.

Q. And when was the second time?

A. Oh, probably about two or three days right in a row, and then maybe a week or two weeks elapsed, and he worked another day. It was always for one day at a time or a day and a half or something like that.

(Testimony of Rowland Bordeau.)

Q. And then a few days later he worked another day. Then again. Is that right?

A. That is right. [326]

* * *

Q. Now, is there any reason why you did not ask Claude Leonard to come back and help Mr. Herrick when he was overworked?

A. No, sir.

Q. You had no reason? A. No, sir.

Q. Was Mr. Leonard discharged or laid off for lack of work? A. Who?

Q. Mr. Leonard. [327]

A. He was discharged.

Q. He was discharged for what reason?

A. Well, I just got through telling.

Q. I am asking you now. For what reason did you discharge him?

A. Because he couldn't do frame and front end work, and I didn't have enough for a frame and front end man and a brake man.

* * *

Q. Well, why did you terminate his employment?

A. Because he wasn't a frame and front end man.

Q. Well, was there a lack of work in the brake section? A. Yes, they were slow.

Q. You testified that this man who assisted Herrick, who came in, worked on brakes, too? Is that right?

(Testimony of Rowland Bordeau.)

A. Yes, I believe he done part of one job.

Q. Is there any reason why you could not call in Mr. Leonard to do that brake work?

A. No, I guess there wasn't; but I didn't know where to get ahold of him. I didn't know that Kenny Herrick was going to feel that he needed the help.

Q. Well, do you not know that Kenny Herrick's wages have increased a great deal since Claude Leonard left there? [328]

A. Yes.

Q. They are almost double now, are they?

A. Not now they aren't.

Q. But up till recently?

A. Yes, we had a busy season.

Q. In other words, he had double the work, the front end and alignment work, and the brake work?

A. That is right.

Q. That just about doubled his commission work?

A. Well, not quite.

Q. Almost, though?

A. Yes.

* * *

Q. (By Mr. Nutter): When did Mr. Herrick go to work for Howell Chevrolet?

A. Within the latter part of 1949.

Q. Would it refresh your memory if I told you it was December of 1949?

A. That could be just about the time.

Q. Now, you previously testified—

Trial Examiner Myers: Is that right, Mr. Nicolson, what [329] he said was the date?

(Testimony of Rowland Bordeaux.)

Mr. Nicoson: That is approximately correct.

Mr. Potruch: Approximately.

• • •

Q. Well, is it your testimony that Mr. Leonard was discharged because of defective workmanship?

A. No. [330]

Trial Examiner Myers: When you say "defective," you mean inefficient?

Mr. Nutter: Inefficient.

Trial Examiner Myers: Is that what you mean, Mr. Witness?

The Witness: Yes, sir.

Q. (By Mr. Nutter): Now, you testified that on two occasions you asked Mr. Leonard to do front end work. What were those two occasions?

A. I do not know when they were, but they were sometime between the time of the 10th of May and before Herrick came to work there. There was a period of about a month or so I didn't have a front end man at all.

Q. Well, can you tell me what season it was—spring, summer, fall, winter, or when?

A. Well, it would have had to have been winter-time.

Q. And about what month?

A. I don't know, sir.

Q. Now, tell me the conversation.

A. Well, we had a couple of front end jobs to do. I asked him if he would do them and he said no.

Q. Well, what did you say to him?

(Testimony of Rowland Burdeau.)

A. I asked him if he would do a front end job for me.

Q. And what did he say?

A. He said, "No." He said, "I am not a front end man. I am [331] a brake man."

Q. He just came right out and said, "I am a brake man"? Is that right? A. That is right.

Q. Now, would you say this—

Trial Examiner Myers: Is it your testimony that Leonard never did any front end work while he was employed by you?

The Witness: Yes, sir.

Trial Examiner Myers: None at all?

The Witness: None at all.

Q. (By Mr. Nutter): Now, when was this other occasion? When did that take place?

A. Oh, a little while after that. I don't recall if it was one day or one month. It was sometime after that.

Q. Was this in the fall of 1949?

A. I don't remember.

Q. Was it the summer of 1949?

A. I don't remember.

Q. Well, actually you don't remember at all, do you?

A. I don't remember those dates when I asked him to do those front end jobs, no.

Q. Well, can you place it at all? A. No.

Trial Examiner Myers: Was Leonard working on any other [332] job at the time you asked him to do the front end job?

(Testimony of Rowland Bordeau.)

The Witness: I couldn't answer that because I don't recall that.

Trial Examiner Myers: Who assigns Leonard his work? You and you alone?

The Witness: Myself and the service salesman, Ed Anthony, are the only two.

Q. (By Mr. Nutter): Are there any other occasions when you asked Leonard to do front-end work? A. I don't think so after that.

Q. At the time of the discharge, did Leonard say anything about front end work? A. Yes.

Q. On March 31? A. Yes.

Q. What did he say?

A. He said, "How about letting me do that job?"

I said, "I don't think you are a front end man. You told me one or twice you were not a front end man."

Q. You told him that at the time of the discharge? A. Yes. [333]

* * *

FREDERICK A. POTRUCH

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nicoson:

Q. What is your business or occupation?

A. I am an attorney.

Q. A member of any law firm?

A. I am a member of the firm of Carter & Potruch. [340]

* * *

Q. In your capacity as an attorney have you ever been employed by the Howell Chevrolet Company?

A. That is right. I have and still am.

Q. There is some testimony in the record, Mr. Potruch, about a Mr. Potruch that made some talks to the employees at Howell Chevrolet. Are you the same Mr. Potruch?

A. I am.

Q. Do you know when the first of those talks was made?

A. I place the first talk sometime in the latter part of May, maybe the early part of April, sometime in there. I may be wrong by a week or so, but it is around in there.

Q. Of what year?

A. 1950.

Trial Examiner Myers: Did you say the latter part of May or the first part of April?

(Testimony of Frederick A. Potruch.)

The Witness: Yes, it is either the last part of May or the first week of April. I can't fix the exact date. I am [341] sorry—I meant March. I am sorry. March.

Trial Examiner Myers: March?

The Witness: March.

Q. (By Mr. Nicolson): The latter part of March or the first part of April; is that your testimony?

A. Yes.

Q. Who were present at the time you were making this first of your talks?

A. Well, Mr. Howell and the employees of the shop. I believe they consisted of the parts men, the mechanics, the body men, painters, lube men, tune-up men. I don't know if I said painters and body men—also the cycle-tow boy. I think he was there.

But at least that is who I asked to have present. I don't know if all of those came in, but that is the request I made of Mr. Howell, to have those all present; and whether they were there—all of those branches—or not, I do not know.

Q. And as far as you know, they were employees of the Howell Chevrolet Company?

A. As far as I know they were employees of the Howell Chevrolet Company. [342]

• • •

Q. Tell us how the meeting was conducted.

A. The meeting was begun by Mr. Howell introducing me to the employees and telling them that I was representing a firm that was representing

(Testimony of Frederick A. Potruch.)

them in a matter that was pending before the National Labor Relations Board.

Q. Did you have some remarks to make to those men? A. I sure did.

Q. What did you say to them?

A. Well, I told them—I said they were pretty aware—first, I started out in a jesting vein, that undoubtedly the union has told them about my coming up and talking to them, and told them that probably the company would send up somebody from Carter & Potruch, namely, Potruch, to talk to them. And we smiled about that, and then I went on with the serious angle of this meeting which went in a vein as follows:

I told them that I felt it was no more than right for the company to state to them what their policy would be toward this whole matter, and I said I intended to tell them what that policy was. And I proceeded to tell the men what that policy was.

I told them that the company would test the jurisdiction of the National Labor Relations Board. I told them that it had been done on other occasions; that they were probably aware of that and had been told so by the union. And I told them that in my opinion an automobile dealer was no more than [343] a local merchant—local merchant of Glendale, as I put it—who bought his cars in the State of California and sold his cars in the State of California; and that in my opinion and from my knowledge of the law that I didn't think

(Testimony of Frederick A. Potzsch.)

that the National Labor Relations Board could have any jurisdiction over the matter; that I felt that if there was anything to be done by the company and the union that they were big enough to do it themselves without having anyone step in and tell them what to do and what not to do as put in any act, and I happened to name the act, the Taft-Hartley Act. I didn't use any other name because I felt the men might be more familiar with the term "Taft-Hartley Act" in talking about labor relations acts, et cetera.

After I presented that to them I went into the ramifications of how the jurisdiction of the Board could be decided. I told them that this was a representation proceeding, that the union was asking that they represent the men to bargain collectively, and that it was at these proceedings that we would deny the jurisdiction of the Board; that there would be a formal hearing, that we would have to run through the gamut of a formal hearing; and I told them that we would still stick to our guns on the question of jurisdiction at all times, just as we have done in these proceedings.

And I told them that the only way we could get an adequate test of the question of jurisdiction, if it was to [344] go that far, would be to go into the Circuit Court of Appeals as had been done in the Townsend case; and then I went into the ramifications of getting it into the Circuit Court of Appeals, explaining to them how that had to be done, what

(Testimony of Frederick A. Potruch.)

the legal mechanics, the legal procedures, would be.

I said that it might even—I didn't say it would, but it might even necessitate—that for any company, not necessarily Howell, to get a case into the United States Circuit Court of Appeals, it might be necessary to do something to be cited for an unfair act under the National Labor Relations Act, that someone might have to be discharged, either on a friendly basis or even deliberately, and then the charge brought. It didn't have to be Howell; it could be somebody else. I only used that as an example.

And then they would have a hearing on it, as we are now having, and I explained that legally. And that after a ruling was handed down, if it was unfavorable, then the company would have the right to appeal to the United States Circuit Court of Appeals; if the Trial Examiner was to rule against the company, and then the Board in Washington ruled against us on jurisdiction, that we would have to take certain procedures to appeal to the Circuit Court of Appeals.

I even went so far as to tell them that it was even possible to go to the United States Supreme Court from the Circuit Court of Appeals. [345]

I wasn't trying to confuse the men, but it was a complicated procedure. If I mentioned the word "certiorari," it was just in the course of speaking. I was trying to avoid any—

Mr. Nutter: Mr. Examiner; I object to what he was trying to avoid.

(Testimony of Frederick A. Potruch.)

Trial Examiner Myers: Just tell us what you said there.

The Witness: I told them it was possible to get a case up to the Supreme Court with the proper set of facts, to get it up there and have the highest Court in the land test the question of jurisdiction.

I also told them that it was possible for a company—that during this period in which there was either a friendly unfair labor charge or an unfair labor act or even a deliberate one—that it is possible to have what is known as an unfair labor strike, and they could go out.

I said to them I didn't know whether they would do it here; I was not concerned about it at all.

I told them that there were other types of strikes to show them the difference. I said to them that there was an organization strike. I even pointed out to them that up to the present time there was no such thing. I showed them what that meant. I told them that if there was an organizational strike the men would be on the line picketing the place to have the union represented. And I told them about an economic [346] strike, what that meant.

And I also told them what the boss would have to do, what the employer would have to do, in the form of replacing men and rehiring in case the strike was on—even on an unfair labor strike. They might have to take the men back. It was entirely possible that the Board would order them to take the men back.

(Testimony of Frederick A. Potruch.)

After that I told them that I did not know how long this would take, whether it would take a month, two months or how long. I said that would depend upon the procedures and how fast we could have hearings, et cetera, how fast the Board would move, how fast we could possibly move under the circumstances; and I told them that during this whole period of time I wanted them to know that I had instructed Mr. Howell—and I was telling them now—that there could not be any increases in wages nor any decreases in wages nor any change in their working conditions. And I said that I had given those instructions to Mr. Howell, and that I would attempt to see that he lived up to them—and I have.

Mr. Nutter: I object to that, Mr. Examiner. I move it be stricken.

Trial Examiner Myers: What?

Mr. Nutter: "I have."

The Witness: I am sorry. I said, "I have."

Trial Examiner Myers: Well, strike it out—if you said [347] that.

The Witness: What I said was that I have up to that point. That is, I am only talking about up to that point. I couldn't talk about the future.

Trial Examiner Myers: Just tell us what you said.

The Witness: Then from that point on, after explaining that there would be no increases or decreases or changes in the working conditions—and

(Testimony of Frederick A. Potruch.)

I also told them that no men could be discharged except for economic reasons or for cause.

Q. (By Mr. Nicoson): Did you say why?

A. I beg your pardon?

Q. Did you say why?

A. I said why, that the Taft-Hartley Act—I tried to couch it so that they could understand it—that the Taft-Hartley Act did not permit an employer to do it; it might be prejudicial to them; it might influence them, might prejudice them to cast their vote for or against—and also that the union could not do that.

And I also told the men that if they did to please notify me. And from there I went on to the subject of treatment of employees. In other words, I pointed out to them—and I was very careful to point out to them that this was my own personal opinion and not the opinion of management—that if I was an employee that I would go to the employer, state my problems to him and see what I could work out with him; and if the [348] employer, to quote, was “a son-of-a-bitch,” and wouldn’t do anything for me I would go out and hang him—to which there was a lot of laughing and everybody looked at Mr. Howell.

I said it wouldn’t be until I first went to the boss myself and had a talk with him—that I would not have gone out and paid anybody to go in and represent me until I had first had the opportunity of doing my own talking.

(Testimony of Frederick A. Potruch.)

And I also told the men right at that point that it had gone too far for any of the men to do that; that they had selected voluntarily somebody to represent them and that person would do all their talking for them at any time they wanted to.

I also told the men that the union—that we had no grievances against the union, we had no grievances ~~all~~ all against them, that Mr. Howell had none against them, that it was their right to join a union or not, join a union as they saw fit, and we would do nothing to discourage them. I even pointed out the example that it was a right to join the union just as much as it was my right to join the Elks or any organization.

I also pointed out to them that while it was their right to do so, it was also our right under the Act to test the Board's jurisdiction.

That in essence was the first meeting. [349]

Q. Now, with respect to the first meeting, when did the second meetings take place

A. I place the second meetings—the second meetings were a series of meetings, a group of meetings—oh, sometime just prior to the election, maybe two weeks prior thereto, possibly ten days prior thereto.

Q. At the time you had these meetings, had the election been set by the Regional Board—if you know?

A. The decision had come down from the Board.

(Testimony of Frederick A. Potruch.)

Q. Did you have any documents with you?

A. I did.

Q. What documents did you have?

A. I had a sample ballot sent to me by the National Labor Relations Board; and I also had a decision of the National Labor Relations Board in Washington.

Q. All right. What did you say to the employees on those occasions?

A. Well, prior to speaking to the employees I spoke to Mr. Howell or Mr. Bordeau—Mr. Howell was out of town, I believe, or not in—and I told them that I would like to tell the men—wait a minute, let me correct myself. I am not so sure Mr. Howell was out of town or not.

Well, anyway, I did speak to Mr. Howell or Mr. Bordeau [350] and said that I had promised the men at the first meeting that I would keep them informed if they had not been informed by the union of the result of our test, and that I would tell them what the decision was; and that was the purpose of calling these men together, to tell them what the decision of the Board was, and also to tell them what the sample ballot was, and then have it posted on the door for them to read.

Meetings were called. At that time Mr. Bordeau suggested to me that we have group meetings rather than all at one time. I suggested all at one time, and Mr. Bordeau said no, he preferred not to because he didn't want to disrupt the place. He was busy and wanted to go on with his work. It made

(Testimony of Frederick A. Potruch.)

a lot of sense to me. And he wanted to bring them in in groups. And I told him to bring them in as convenient—used car men, parts department, et cetera.

Those groups ranged from anywhere—to correct Mr. Bordeau, for he wasn't there at all times—from four to ten men. I do not think there were more than ten men on any one time. And I would say there were five such group meetings. It is possible there were six or four—there were several group meetings.

Q. Tell was what you said.

A. Nobody introduced me to the men. I didn't think it was necessary for me to be introduced because I had already spoken to them before. [351]

First thing I told them was that the National Labor Relations Board had handed down a decision, and I told them what that decision was: That they had found that the Howell Chevrolet Company either was engaged or affected commerce and therefore came under their jurisdiction, and that they had ordered an election.

And then I unfolded the ballot and held it up before them and said, "This is a sample of the ballot."

And then I took the ballot and read portions of it. I read practically, I would say, 90 per cent of the ballot. I even told them the time of the election, the place of the election. There would be a secret ballot. There would be a member of the Board present to conduct such an election.

(Testimony of Frederick A. Potruch.)

I also told them that it was important that they mark their ballots clearly with an X, either for the union or against, not with a check or anything else. It was entirely possible for the Board agent to say that it was not clearly marked and throw the ballot out, and they would lose their ballot as a [352] result.

* * *

Q: (By Mr. Nicoson): Mr. Potruch, George Smith, a witness for the General Counsel, testified that in one of your talks you stated that there would be a new deal after the first of the month. Did you say that or anything like that?

A. I didn't say anything like that, or even close to that.

Q. He further stated that at that same time and place you further stated that you could not say what the new deal would be at that particular time. Did you say that or anything like that?

A. I didn't say that or anything like it or close to it.

Q. Mr. George Kirkland, a witness for the General Counsel, during his testimony testified that in one of your speeches you said that the union would never get a contract out of Howell. Did you say that or anything like that?

A. I did not say that.

Q. Mr. Fitzhugh, a witness for the General Counsel, testified [357] that during your speech or your talk you said that the union would not get a

(Testimony of Frederick A. Potruch.)

contract even if they won the election. Did you say that or anything like that?

A. I did not say anything—I did not say that or anything like that. I did say, however, that—in explaining what an unfair labor charge would be—that one of the ways in which to bring the case up to the Board to test a question on jurisdiction would be by the commission of an unfair labor act. [358]

. . .

DOYLE CHRISTIAN

a witness recalled by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nicoson:

Q. You are the same Mr. Doyle Christian that appeared and testified previously in this hearing, are you not? A. I am.

Q. What is your business or occupation?

A. Engine tune-up or electrical mechanic.

Q. By whom are you employed?

A. Howell Chevrolet.

. . .

Q. (By Mr. Nicoson): —if during that period of time you have ever been asked to do the work on stoplight switches? A. Yes.

Q. Has that been periodical or over that entire period of time? [359] A. The entire period.

(Testimony of Doyle Christian.)

Q. Do you know of any instances out there in the two years that you have been working there that the repairing of stoplight switches or any work on stoplight switches was assigned to anyone but you? A. No.

Q. Do you do the stoplight switch work on both types of stoplight switches? A. Yes. [360]

* * *

Q. (By Mr. Nicolson): Now, during the two years or more that you have been there, do you know of any occasion when the stoplight switch work was assigned to the brake man?

A. Never. [361]

* * *

Q. Have you had occasion to observe whether or not types of brake work are being done on the lube rack at the Howell Chevrolet?

A. Yes, the minor brake adjustments.

Q. And for what period of time has that been going on, if you know?

A. I know that it has been going on since Mr. Bordeau came in as service manager.

Q. Has Mr. Bordeau ever talked with you about the union? A. No, sir.

Q. Has Mr. Howell talked with you about the union? A. No.

Q. Have any other of the members of management out there discussed the union with you?

A. No. [362]

* * *

KENNETH HERRICK

a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nicogon:

Q. Mr. Herrick, what is your business or [365] occupation? A. Wheel alignment and brakes.

Q. By whom are you employed?

A. Howell Chevrolet.

Q. And how long have you been employed by Howell Chevrolet?

A. This time, the last time, since last November, about 11 months.

Q. November of 1949? A. '49.

Q. Had you worked for the Howell Chevrolet Company on a previous occasion?

A. I had. I left in 1948—no, it was in '47.

Q. 1947? A. Yes.

Q. How long had you worked for them at that stretch?

A. Approximately a little over two years.

Q. And you left there on your own volition?

A. Right.

Q. And returned November of 1949?

A. 1949.

Q. Upon your return to work at Howell Chevrolet in November of 1949, what duties were assigned to you?

(Testimony of Kenneth Herrick.)

A. Wheel alignment and frame [366] straightening.

* * *

Q. Now, do you have a machine out there that is used for the purpose of straightening frames?

A. Definitely. We do.

Q. Is that a complicated operation?

A. It sometimes is—the use of it.

Q. And requires some heavy work?

A. Right.

Q. You operate that?

A. Yes, sir.

Q. And you operated those types of machines before you came back to Howell in November?

A. Yes, sir.

Q. Prior to coming back to Howell in November, 1949, had you also done front end work?

A. Yes, I had.

Q. Had you in your other employment done any work on brakes?

A. I had.

Q. How long have you been engaged in working on front ends and brakes?

A. Approximately 10 years or maybe a little longer.

Q. Do you know Claude Leonard?

A. Yes.

Q. Did you work in the same shop that he did? [367]

A. Yes.

Q. Were you working there in March of 1950?

A. Yes.

Q. When Mr. Leonard left?

A. Yes.

(Testimony of Kenneth Herrick.)

Q. After Mr. Leonard left, was there any change made in your duties or assignments?

A. I was assigned the brakes along with my wheel alignment jobs.

Q. Was there any equipment added to your position there?

A. Equipment? We had the equipment. There were a few little changes made, transfers, but—

Q. What were those changes?

A. Well, the brake drum lathe was transferred from the inside shop out to where my department is, on the side.

Q. And after that change, who operated that brake drum lathe? A. I did.

Q. Who operated the front end machine?

A. I.

Q. Who operated the frame straightening machine?

A. I. Only on one occasion I had a fellow come in to help me.

Q. Oh, yes, tell us all about that.

A. He owed me a little money. Oh, maybe two days he was out there. I think two different occasions I had him, and that [368] was definitely up to my personal self. I paid him out of my pocket and everything else. Howell did not have anything to do with that part of it. He used his own tools, what tools he had. On the frame straightening you do not need too many tools outside of what goes on it. [369]

(Testimony of Kenneth Herrick.)

Q. Could you tell us whether or not there has been anybody employed as a brake man at the Howell Chevrolet since Mr. Leonard has left?

A. Definitely not. [370]

Q. Mr. George Smith has testified that on occasions in the Playhouse Bar, at which you were present, Mr. Bordeau was present and Mr. Smith was present that Mr. Bordeau said to you that if the union organized the Howell shop, that Mr. Howell would close it down. Did any such conversation ever take place?

A. I do not believe it did. [371]

Q. Oh, Mr. Herrick, you attended a union meeting sometime in the latter part of January, 1950, did you not?

A. January, 1950?

Q. Yes. A. I did attend a meeting.

Q. And you signed a card? A. Yes.

Q. And the next day you showed up wearing a union button?

A. Well, I had a button. I don't remember whether I got it that night or not.

Q. Well, within a very few days after the signing of the card?

A. Yes.

Q. You had a button? A. Yes.

Q. And you wore it in the shop? A. Yes.

Q. Was there ever anything said about the wearing of that button?

A. Nothing said. [373]

(Testimony of Kenneth Herrick.)

Cross-Examination

By Mr. Nutter:

Q. Do you recall telling me that Mr. Burgett worked chiefly on frame straightening, is that right? A. Right.

Q. Is that his name—Burgett? [375]

A. Burgett.

Trial Examiner Myers: How do you spell his name?

The Witness: B-u-r-g-e-t-t.

Q. (By Mr. Nutter): And do you recall telling me that while he was working on frame straightening you were working on brake jobs?

A. Right.

Trial Examiner Myers: Is that so?

The Witness: Yes—brakes and front ends. [376]

• • •

JOSEPH F. PRICE

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

• • •

Direct Examination

By Mr. Nicoson:

Q. Mr. Price, what is your business or occupation? A. I am a mechanic, I guess.

Q. What kind of a mechanic, sir?

A. Automobile.

(Testimony of Joseph F. Price.)

Q. By whom are you employed?

A. Howell Chevrolet. [385]

* * *

Q. Did any union activity among the employees come to your attention while you were employed there?

A. Oh, yes. I heard quite a bit about it. [386]

* * *

Q. Did any of your supervisors or officers of the company talk with you about any of that literature?

A. No, sir.

Q. Did any of them during that period of time ask you if you were going to join or had joined the union?

A. No, sir.

Q. After you signed that card did you wear a union button in the plant?

A. I did.

Q. Did any of them ask you about the union after that?

A. No, sir.

Q. Mr. Bordeau didn't?

A. No, sir.

Q. Did Mr. Howell?

A. No, sir.

Q. Did any other person out there connected with management ask you anything at all about it?

A. They did not.

Q. Did you and Kenny Herrick talk to Mr. Bordeau about it?

A. Well, we started to but we didn't get very far.

Q. What did you say to him and what did he say to you?

(Testimony of Joseph F. Price.)

A. He just told us that if we wanted to vote for a union to go ahead, that was our business.

Q. Did you see Claude Leonard wear a button around there? A. I did. [388]

Q. George Kirkland? A. Yes.

Q. And Lee Fitzhugh?

A. Yes, sir. [389]

* * *

Q. Do you know whether or not the Howell Company has ever employed anybody to take Mr. Leonard's place on the brake job?

A. Have they ever employed anybody?

Q. Yes.

A. Not unless it was Kenny; they haven't other than that. [390]

* * *

PHILIP CABALLERO

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Nicoson:

Q. What is your business or occupation, Mr. Caballero? A. I am an automobile painter.

Q. By whom are you employed?

A. Pardon me?

Q. By whom are you employed?

A. Howell Chevrolet Company.

(Testimony of Philip Caballero.)

Q. How long have you been there?

A. Approximately three and a half years. [391]

Q. There has been some testimony about union activity among the employees at Howell Chevrolet. Do you know anything about that?

A. I heard.

Q. When did it first come to your attention?

A. I suppose it was around January or so.

Trial Examiner Myers: This year?

The Witness: This year.

Q. (By Mr. Nicoson): Any particular part of January? A. I couldn't say offhand.

Q. How did it come to your attention?

A. Through some of the employees in the shop.

Q. Anyone that you now recall?

A. Mr. Leonard.

Trial Examiner Myers: Claud Leonard?

The Witness: Claud Leonard, yes.

Q. (By Mr. Nicoson): Anyone else?

A. George Kirkland, yes.

Q. Did you sign a card? A. Yes, I did.

Q. After you signed the card did you wear a union button? A. I did.

Q. While at work? A. Yes, sir.

Q. Did Mr. Bordeau or Mr. Howell or any of the others from [392] management talk to you about not to join the union or wear the union button or anything like that? A. No, sir.

Q. Nothing else was said? A. No, sir.

* * *

(Testimony of Philip Caballero.)

Q. (By Mr. Nicoson): Did Mr. Howell say anything to you about the union or your wearing of a button or anything about your activities?

A. No, sir, he did not.

Q. Did Mr. Bordeau say anything like that to you? A. He did not.

Q. Did any of the others from management say voted one way or the other? A. No, sir.

Q. Did anybody promise you an increase if you anything to that effect? A. No, sir.

Q. Was anything said about an increase by any of the people from management?

A. Not at that time. [393]

Q. You say "not at that time." Did somebody say something about an increase at a later date?

A. After the banquet at the Mayfair.

Q. After the banquet at the Mayfair?

A. Yes, sir.

Q. That took place after the National Labor Relations Board held an election out there?

A. That's right. [394]

* * *

RICHARD A. WELLS

a witness called by and on behalf of the Employer,
being first duly sworn, was examined and testified
as follows:

• • •
Direct Examination

By Mr. Nicoson:

Q. What is your business or occupation?

A. Car washer and polisher.

Q. By whom are you employed?

A. Howell Chevrolet.

Q. How long have you worked for Howell Chevrolet?

A. Twenty-three months and three days. [396]

Q. Were you employed there around the first of the year? A. Yes, I was.

Q. Did you become aware of any union activity around that period of time? A. Yes, I did.

Q. How did you become aware of it?

A. Well, by Mr. Leonard and George Kirkland.

• • •

Q. You didn't wear a union button. After you signed that card did Mr. Howell speak to you about the union in any manner?

A. No, he didn't.

Q. Did Mr. Bordeau? A. No.

Q. Is Mr. Bordeau your supervisor, your boss?

A. That's right.

Q. Did anyone else from the management of Howell Chevrolet [397] talk with you about the union in any manner? A. Not anyone.

(Testimony of Richard A. Wells.)

Q. Did anybody promise you an increase if you voted one way or the other out there?

A. No, they didn't.

Cross-Examination

By Mr. Nutter: [398]

Q. Did you ever talk to a Malvin Paschal about the union? A. I did not.

Mr. Nutter: Mark this.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 38 for identification.)

Q. (By Mr. Nutter): Mr. Wells, I want you to look at this card and study it carefully and tell me if you have ever seen that before? Look at the signature down at the bottom.

A. What about the signature?

Q. Do you recognize it?

A. I recognize the name, sir.

Q. That's Malvin Paschal, is it?

A. That's right.

Q. I will ask you if you gave that card to Malvin Paschal?

A. I gave that card to Malvin Paschal. Claud Leonard gave me the card to give to him. [399]

Q. You gave it to him?

A. I gave it to him.

(Testimony of Richard A. Wells.)

Q. Malvin Paschal filled it out, didn't he?

A. I guess he did.

Q. Did he give it back to you?

A. No, he did not.

Q. Did you talk to Malvin Paschal about the card at all?

A. No, I did not.

Q. What did you say to him when you gave him the card?

A. I told him this was a card that Claud Leonard sent over from the union, and I gave him the card and that was all. [400]

* * *

Q. Now, I want you to think this over carefully, Mr. Wells: When you gave this card to Mr. Paschal did you talk to him about the card in any way?

A. No, I didn't talk to him about the card.

Q. You handed it to him?

A. I gave it to him and told him this was a card that Claud Leonard sent over to him and to fill it out and send it back to him. He gave it back to him.

Q. You gave it back to Leonard?

A. No, I didn't have anything to do with the card after I gave it to him. [401]

* * *

Q. (By Mr. Nutter): Now, isn't it a fact that shortly before the election Mr. Howell came to you and asked you if you would vote in favor of the plant?

A. No, he did not.

(Testimony of Richard A. Wells.)

Q. Isn't it a fact that Mr. Howell came up to you before the election and asked you if you would vote in favor of the company? A. No. [405]

Q. Who is your supervisor when you polish and wash cars? A. Mr. Bordeau.

Q. Mr. Bordeau? A. Yes.

Q. Isn't it a fact that Mr. Bordeau said something to you about wearing a union button?

A. No.

Q. So you didn't wear one?

A. No, he never said anything to me about a union button. [406]

. . . C

GEORGE GREEN

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

. . .

Direct Examination

By Mr. Nicolson:

Q. What is your business or occupation?

A. Radio repair, sir.

Q. By whom are you employed? [412]

A. Howell Chevrolet?

Q. How long have you been employed there?

A. Oh, about nine or ten months.

Q. Do you recall about when you came there?

A. Oh, it was either February or March.

Q. Of 1950? A. Yes.

Q. Did you learn during your course of employ-

(Testimony of George Green.)

ment out there about any union activity being conducted among the employees? A. Yes, sir.

Q. How did you learn that?

A. Well, the first day I was there I was approached by Barnum and Leonard.

Q. (By Mr. Nicolson): After being approached by Mr. Barnum and Mr. Leonard, were you talked to by Mr. Howell about the union in any form or manner? A. No, sir.

Q. Were you talked to by Mr. Howell in any form or manner prior to the time either Mr. Barnum or Mr. Leonard talked to you?

A. No, sir. [413]

Q. Were you talked to about the union by Mr. Bordeau in any shape or form at any time?

A. No.

Q. Were you talked to about the union in any shape or form by any of the officers of the Howell Chevrolet Company? A. No.

Q. Did Mr. Howell say anything to you about any raises? A. No, sir.

Q. Did Mr. Howell say that you would get a raise if you voted any particular way in the election? A. No.

Q. Did Mr. Bordeau talk to you about any raises? A. No, sir.

Q. Did Mr. Bordeau tell you that you would get a raise if you voted any particular way in the election? A. No, sir. [414]

JOSEPH SCIOLORO

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicolson:

Q. Mr. Scioloro, what is your business or occupation? A. Used car mechanic.

Q. By whom are you employed?

A. Mr. Howell.

Q. Howell Chevrolet Company?

A. That's right.

Q. How long have you been so employed?

A. Right around eleven months, I guess.

Q. While you were employed by Howell Chevrolet Company, did you sign a union card? [415]

A. I did.

Q. Either before or after signing the card did Mr. Howell say anything to you about the union?

A. No, he didn't.

Q. Did Mr. Berdean say anything to you about the union? A. No, sir.

Q. Who is your boss over there?

A. Right now Bob Roberts, I suppose.

Q. Was Mr. Roberts there in January, February and March, 1950? A. Yes.

Q. Did he say anything to you about the union in any way, shape or form? A. No, sir.

Q. Did Mr. Howell promise you a raise if you voted one way in the election? A. No, sir.

(Testimony of Joseph Scalero.)

Q. Did Mr. Bordeau make such a promise?

A. No, sir.

Q. Did Mr. Roberts make such a promise?

A. No, sir.

Q. Was anything said to you by Mr. Howell about a wage increase prior to the election?

A. No, sir.

Q. Was anything said to you about a wage increase by Mr. Bordeau prior to the election? [416]

A. No, sir.

Q. Or by Mr. Roberts?

A. No, sir, nobody said anything. [417]

ROBERT E. REEVE

a witness called by and on behalf of the Employer, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicolson:

Q. Mr. Reeve, what is your business or occupation? A. Automobile lubrication.

Q. By whom are you employed?

A. Howell Chevrolet.

Q. How long have you been employed by Howell Chevrolet?

A. Approximately a year and a half.

(Testimony of Robert E. Reeve.)

Q. Were you employed there at the time Mr. Bordeau came on as the service manager? [418]

A. Yes, sir.

Q. And had you been employed prior to that time? A. Yes.

Q. During your tenure with the Howell Chevrolet Company, have you done any brake adjustments? A. Yes, sir.

Q. On the lube rack? A. Yes, sir.

Q. How long have you been doing that?

A. I would say almost the entire length of my service there.

Q. Were you doing that type of work before Mr. Bordeau came? A. Yes, sir.

Q. And you continued to do it after he came, is that correct? A. Yes, sir. [419]

Q. Three or four months. While you were employed at Howell Chevrolet did Mr. Howell ever speak to you about the union in any shape or form?

A. No, sir.

Q. Did he ask you any questions about it?

A. No, sir.

Q. Did you have any discussions with him about it? A. No, sir.

Q. Did Mr. Chub Bordeau ever ask you anything about the union? A. No, sir.

Q. Did you ever have any discussions with Mr. Bordeau about the union? A. No, sir.

Q. Or did he ever have any with you?

A. No, sir. [420]

(Testimony of Robert E. Reave.)

Q. Did any other member of the management out there ever have any discussions with you about the union in any shape or form?

A. None whatsoever.

Q. Did Mr. Howell promise you an increase if you voted any particular way in the union?

A. No, sir.

Q. Did Mr. Bordeau make such a promise to you?

A. No, sir.

Q. Did anyone else in the management make any promises to you about voting in the union?

A. None whatsoever.

Q. Did anyone tell you that you might be fired if you voted any particular way?

A. No, sir, never. [421]

* * *

CLAUD LEONARD

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nutter:

* * *

Q. Mr. Leonard, I will ask you if you gave a union authorization card to Mr. Richard Wells during the month of February, 1950?

A. I did.

Q. When was that? Will you tell us the circumstances?

(Testimony of Claude Leonard.)

A. Well, it was the 11th or 12th of February, I believe. He said he would take it over and have Paschal sign it. That's [425] the last I saw of the card until after it was signed. [426]

Q. (By Mr. Rutter): Mr. Leonard, Mr. Berdeau, a witness called by the Respondent, testified that on two occasions during the year 1949 you refused to do front end work while working at Howell Chevrolet Company. Will you tell us [431] about that?

A. I recall one occasion about front end work where I was asked and I had a brake reline that I was busy on. That is the only thing that you can say I refused because I had a brake job that I was working on.

Q. Will you tell us about that occasion? Who was present?

A. I believe Ed Anthony. I am not sure.

Q. You say that you were working on a brake reline job? A. That's right.

Q. And do I understand that while you were on that job someone requested you to do a front end job? A. Yes.

Q. What was your answer?

A. I said I was busy on the brakes. The brakes was my job.

Q. Was there anything else said at that time?

A. No. [432]

. . .

JACKSON HOWELL

a witness called by and on behalf of the General Council having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nutter:

Q. Mr. Howell, did you give a statement to the Field Examiner of the National Labor Relations Board?

A. I did.

Q. In that statement did you say that the only reason that Claud Leonard was fired was because of lack of work?

Mr. Nicolson: I suggest, your Honor, that he be given the statement.

Mr. Nutter: I am just asking him.

Mr. Nicolson: How would he know?

Mr. Nutter: If he recalls.

Mr. Nicolson: Pardon me.

Trial Examiner Myers: Do you recall that, Mr. Howell?

The Witness: I am trying to think of what I said to the man concerning—

Trial Examiner Myers: Do you want to see the statement?

Q. (By Mr. Nutter): Was Claud Leonard laid off for lack of work?

A. Yes.

Q. Was that the only reason?

A. That's the only reason we gave him. [436]

Q. Is that the only reason?

A. No.

Q. Did you make a statement to Mr. Norman

(Testimony of Frederick Howell)

Given, as agent of the National Labor Relations Board, on the 27th day of June, 1933, that Mr. Leonard was laid off for lack of work?

A. I don't think that is the correct date.

Q. That is not the correct date of the affidavit?

A. I don't think it is.

Q. Did you give a statement?

A. I gave him a statement.

Q. Did you give any other reasons for the layoff of Mr. Leonard to Mr. Green other than he was laid off for lack of work?

A. I mentioned in there his seniority as compared with the seniority of Kenney Harwick.

Q. Did you mention any other reasons?

A. I don't believe so. [437]

FREDERICK A. POTZUCK

a witness recalled by and on behalf of the Employer, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Nicolson: [440]

Q. Shortly after the date of that letter did you on behalf of Mr. Howell attend a conference or an informal meeting at the National Labor Relations Board?

A. I did. [441]

(Testimony of Frederick A. Pollock.)

Q. What did you say? I don't think that they had a majority at the Howell Chevrolet Company, and there were other statements made. I don't think it is necessary to go into them unless you want them.

Q. What do you mean by that statement?

A. I meant that the union did not have a majority of the employees.

Q. Did you so state?

A. I so stated. [442]

Q. Did the union produce any proof to you at that time that they had a majority?

A. The union did not produce any proof to me of a majority. [443]

...

EDWARD M. SKAGEN

a witness recalled by and on behalf of the General Counsel, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nutter:

Q. Are you the same Mr. Skagen that testified before? A. Yes, I am.

Q. Mr. Skagen, there has been some testimony here that there was a conference held, an informal conference, held in the National Labor Relations Board's office in the month of February with Mr.

I remember it so well as though Mr. Potruch was sitting on the edge of the table and he says, "I am

...the fact that I was not at all
...of these things. I was not
...to go to a meeting on that day. I didn't
...any papers with me.

Then we went ahead and discussed the Standard
Oil case and as I remember (if we did not discuss
the Howell Chevrolet case any more that day).

Q. Was there any other discussion of Howell
at all?

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

[The page contains faint, illegible horizontal lines suggesting ghosting or extremely faded text.]

10. You are the same Mr. Gordon that testified

1. The following information was obtained from the records of the Federal Bureau of Investigation, Bureau of Motor Vehicle Registration, and the Bureau of Motor Vehicle Inspection, Department of Transportation, regarding the vehicle described in the above captioned letter:

2. The vehicle described in the above captioned letter is a 1967 Chevrolet Camaro, VIN 138 771 101, and is registered in the State of California.

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Q Will you tell us what took place at that conference?

A. John Foote and myself came from the Valley that morning to attend the Howell Chevrolet informal conference. We went into Fred Davis' office and was waiting there when Mr. Potruch,

(Testimony of Defendant-Exhibitor)

Mr. Shapiro and two other gentlemen came in. There were introductions but I didn't recognize either of the other men that I had ever met before. There was some discussion about—I think Mr. Davis brought up the subject of commerce. He said, "Are you going to contest commerce in this case?" or something in those words.

Mr. Poprath said, "Yes, we are going to admit we are under commerce. I am going to surprise all you guys."

He says, "After all, we advertise on television and radio and so forth. Certainly we are in commerce."

We all kind of gasped a little bit because of the statement in other cases where he so vigorously fought commerce jurisdiction. I don't know who said it, but somebody said, "You mean you are going to admit commerce in the Howell Chevrolet case?"

Poprath said, "Howell Chevrolet case? Hell, no. I am talking about the Standard Oil case." He says, "Howell [449] Chevrolet case, I have no papers or anything yet, but about that. I never met Mr. Howell. I don't know what kind of business he is in, whether he sells new cars or used cars."

As far as I remember, there was no more discussion other than he said that he was going to contest jurisdiction of the Board—I mean commerce and would have to go to a formal hearing on it. [449]

1. The first of these is the fact that the
2. Government has been unable to obtain the
3. necessary funds to carry out its policy.
4. The second is the fact that the Government
5. has been unable to obtain the necessary
6. funds to carry out its policy. The third is
7. the fact that the Government has been unable
8. to obtain the necessary funds to carry out
9. its policy. The fourth is the fact that the
10. Government has been unable to obtain the
11. necessary funds to carry out its policy.

1. The first of these is the fact that the government has not been able to control the flow of capital into the country. This has led to a massive accumulation of foreign debt, which is now reaching a level of over \$100 billion. This debt is being serviced by the government, which is unable to do so without resorting to printing money, leading to inflation.

This is to certify that the attached proceedings before the National Labor Relations Board for the San Diego in the matter of Howell Chevrolet Company and International Association of Machinists, Local Lodge No. 122, Case No. 14-114, on 11-26-1946, Los Angeles, California, October 31, 1946, Pages 1 to 118, were had as shown copies, and that this is the original transcript thereof for the files of the Board.

ACORN IMPORTING
COMPANY

Case Report:

By /s/ **ARNOLD PAUL,**
Field Reporter.

In the United States Court of Appeals

for the District of Columbia

NATIONAL LABOR RELATIONS BOARD,

Respondent,

HOWELL CHEVROLET COMPANY,

Respondent.

**CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD**

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 10241, Rules and Regulations of the National Labor Relations Board, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of the proceedings had before said Board, entitled, "In the Matter of Howell Chevrolet Company and International Association of Machinists, District Lodge No. 727," and, "In the Matter of Howell Chevrolet Company Employer, and International Association of Machinists, District Lodge No. 727," the same being known as Cases Nos. EL-CA-794 and EL-EC-1148, respectively, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents hereto are as follows:

(1) Order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated October 31, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Myers on October 31, 1950, November 1, 2, and 3, 1950, together with all exhibits introduced in evidence.

(3) Trial Examiner's order correcting the record, dated December 4, 1950, with stipulation to correct typographical error in transcript annexed, together with affidavit of service and United States Post Office return receipts thereof.

(4) Copy of Trial Examiner Myers' Intermediate Report, dated December 19, 1950, (annexed to item 12 hereof); order transferring case to the Board, dated December 27, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(5) Respondent's letter, dated December 29, 1950, requesting permission to argue orally before the Board. (Denied, see Board's Decision and Order dated July 29, 1951, page 2, footnote 2.)

(6) Respondent's telegram, dated January 4, 1951, requesting extension of time for filing exceptions and briefs.

(7) Copy of Board's telegram, dated January 8, 1951, granting all parties extension of time to file exceptions and briefs.

(8) Respondent's exceptions to the Intermediate Report, received January 22, 1951.

(9) General Counsel's telegram, dated January 23, 1951, requesting leave to file reply brief.

(10) Respondent's telegram, dated January 23, 1951, opposing General Counsel's request for leave to file reply brief.

(11) Copy of Board's telegram, dated January 23, 1951, granting General Counsel leave to file reply brief.

(12) Copy of Decision and Order issued by the National Labor Relations Board on July 23, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 15th day of October, 1951.

/s/ FRANK M. KLEILER,
Executive Secretary.

[Seal]

NATIONAL LABOR
RELATIONS BOARD.

[Enforced]: No. 12140. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Howell Chevrolet Company, a Corporation, Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed October 22, 1961.

✓ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of Court of Appeals and Cause.]

**STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY**

To the Honorable Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, Petitioner
in the above proceeding, in conformity with the
rules of this Court, hereby states the following
points on which it intends to rely herein:

1. The Act, as amended, is applicable to the
respondent.
2. The Board properly held that respondent vio-
lated Section 8 (a) (1) of the Act by interfering
with and coercing its employees by means of inter-
rogation and threats of reprisal and promise of
benefit.
3. The Board properly held that respondent vio-
lated Section 8 (b) (3) of the Act by discrimina-
torily discharging Claude Leonard, an employee.
4. The Board properly held that respondent re-
fused to bargain, in violation of Section 8 (a) (5)
of the Act.

Dated at Washington, D. C., this 15th day of
October, 1951.

**NATIONAL LABOR
RELATIONS BOARD,**

By */s/* A. NORMAN SOMERS,
Assistant General Counsel.

[Endorsed]: Filed October 22, 1951.

[Title of Court of Appeals and Cause.]

**PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD**

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 133, 29 U. S. C., Supp. IV, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Howell Chevrolet Company, Glendale, California, its officers, agents, successors, and assigns. The proceedings resulting in said order are known the records of the Board as "In the Matter of Howell Chevrolet Company and International Association of Machinists, District Lodge No. 727, Case No. 21-CA-794"; and "In the Matter of Howell Chevrolet Company, Employer, and International Association of Machinists, District Lodge No. 727, Petitioner, Case No. 21-RC-1146."

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on July 23, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in these cases, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Howell Chevrolet Company, Glendale, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International Association of Machinists, District Lodge No. 727, or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

(b) By means of interrogation, threats of reprisal, promises of benefit, or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist

International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from the exercise of such rights.

(c) Refraining upon request, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all its employees at the Glendale, California, plant, excluding salaried office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all the employees in the above-described appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Claude Leonard reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights or privileges.

(c) Make whole Claude Leonard, in the manner set forth in the section entitled "The Remedy," for any loss of pay which he may have suffered by

records of the Respondent's discrimination against him.

(3) Upon request, made available to the Board or its agents for examination and copying, all pay roll records, social security payment records, time cards, personnel records and records, and all other records necessary to establish the amount of back pay due and the right of reinstatement under the terms of this Order.

(4) Post in the plant in Southern California, copies of the notice attached hereto and marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Twenty-first Region shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained as it for sixty (60) days. It is the duty of the Respondent to ensure that all copies of said notice are posted in conspicuous places in the plant. The Respondent shall be liable for the cost of the notice if such cost is not allowed, allowed or covered by any other material.

(5) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

When the Court shall find that the Respondent is in violation of a decree of a United States Court of Appeals, there shall be inserted in the notice, before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

By /s/ A. MICHAEL BOWMAN,
Assistant General Counsel.

Dated at Washington, D. C., this 18th day of
October, 1931.

Article 11.11

It is the policy of the Company to employ only persons who are of legal age, of good character, and who are capable of performing the work assigned to them. The Company reserves the right to refuse employment to any person who is a member of, or affiliated with, any labor organization which is not affiliated with the International Union of Marine and Shipbuilding Workers of America.

We will not discriminate in hiring, promotion, or in any other manner on the basis of race, color, religion, or national origin. We will not discriminate in hiring, promotion, or in any other manner on the basis of sex. We will not discriminate in hiring, promotion, or in any other manner on the basis of age. We will not discriminate in hiring, promotion, or in any other manner on the basis of marital status. We will not discriminate in hiring, promotion, or in any other manner on the basis of political affiliation. We will not discriminate in hiring, promotion, or in any other manner on the basis of union membership.

We will not discriminate in hiring, promotion, or in any other manner on the basis of race, color, religion, or national origin. We will not discriminate in hiring, promotion, or in any other manner on the basis of sex. We will not discriminate in hiring, promotion, or in any other manner on the basis of age. We will not discriminate in hiring, promotion, or in any other manner on the basis of marital status. We will not discriminate in hiring, promotion, or in any other manner on the basis of political affiliation. We will not discriminate in hiring, promotion, or in any other manner on the basis of union membership. We will not discriminate in hiring, promotion, or in any other manner on the basis of race, color, religion, or national origin. We will not discriminate in hiring, promotion, or in any other manner on the basis of sex. We will not discriminate in hiring, promotion, or in any other manner on the basis of age. We will not discriminate in hiring, promotion, or in any other manner on the basis of marital status. We will not discriminate in hiring, promotion, or in any other manner on the basis of political affiliation. We will not discriminate in hiring, promotion, or in any other manner on the basis of union membership.

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Respondent admits that it is a corporation organized and existing under and by virtue of the laws

[illegible]

Further supporting respondent alleges that the proposed new law, pending in the National Labor Relations Board of the State was suspended in August, 1941, because of the emergency within the meaning of the National Labor Relations Act, an emergency is not supported by substantial evidence in the record considered as a whole and is therefore void and of no effect.

Further answering, respondent alleges that said

purported order of the National Labor Relations Board is unconstitutional and void in that it deprives respondent of rights guaranteed to it by the Fifth Amendment to the United States Constitution.

Further answering, respondent alleges that the record does not contain substantial evidence on the record considered as a whole sufficient in law to support said purported order of the National Labor Relations Board, or any part thereof.

VI.

Respondent admits that on or about July 23, 1951, respondent received by registered mail a copy of the purported order of the National Labor Relations Board.

VII.

Respondent admits that the National Labor Relations Board has certified and filed with this Court a transcript of the record of the proceedings before the Board, including the pleadings, testimony in evidence adduced before the Trial Examiner, but denies that the findings of fact, conclusions of law and order of the National Labor Relations Board have been made upon such record, and alleges that said findings of fact and conclusions of law and order of the Board are contrary to Section 10 of the National Labor Relations Act, as amended.

Wherefore, respondent having fully answered prays that the petition for enforcement of the

National Labor Relations Board

order of the National Labor Relations Board to
disband.

By /s/ JAMES M. NICHOLSON,
GARTER & POTRUCH,

By /s/ FREDERICK A. POTRUCH,
Attorneys for Respondent, Howell Chevrolet Com-
pany.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 5, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
RESPONDENT INTENDS TO RELY

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The respondent in the above-entitled matter, in
conformity of the rules of this Court, hereby states
the following points as those on which it intends
to rely herein:

(1) That the National Labor Relations Board
does not have jurisdiction over respondent, or its
business.

(2) That respondent is not engaged in a busi-
ness affecting commerce within the meaning of the
National Labor Relations Act, as amended.

(3) That the proceedings before the Board are unconstitutional and void in that they have deprived respondent of rights granted to it by the Fifth Amendment of the United States Constitution.

(4) That respondent was not accorded a fair and impartial hearing before an impartial Trial Examiner and was not afforded the requisites of due process of law, as guaranteed to it by the Fifth Amendment of the Constitution of the United States.

(5) That the Board's findings of fact and conclusions of law that respondent had interfered with and coerced its employees in violation of Section 8 (a) (1) of the National Labor Relations Act was not supported by substantial evidence on the record considered as a whole and therefore is void and of no effect.

(6) That the Board's findings of fact and conclusions of law that respondent did discriminatorily discharge Claude Leonard in violation of Section 8 (a) (3) of the National Labor Relations Act is not supported by substantial evidence on the record considered as a whole and is therefore void and of no effect.

(7) That the findings of fact and conclusions of law of the Board that respondent had refused to bargain in violation of Section 8 (a) (5) of the National Labor Relations Act, as amended, is not supported by substantial evidence on the record considered as a whole and is therefore void and of no effect.

Dated at Los Angeles, California, this 1st day of November, 1951.

**HOWELL CHEVROLET
COMPANY.**

By /s/ **JAMES M. NICOSON,
CARTER & POTRUGH,**

By /s/ **FREDERICK A. POTRUGH,**
Attorneys for Howell
Chevrolet Company.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 5, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—vs.

The President of the United States of America
Howell Chevrolet Company, 1000 South Brand
Boulevard, Glendale, California, and Interna-
tional Association of Machinists, District Lodge
No. 727, At: Messrs. E. M. Skagen and Delmar
Gordon, 904 Van Nuys Bldg., Los Angeles (14)
California

Greeting:

Pursuant to the provisions of Subdivision (e)
of Section 160, U.S.C.A. Title 29 (National Labor
Relations Board Act, Section 10(e)), you and each
of you are hereby notified that on the 22nd day of

October, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on July 23, 1951, in a proceeding known upon the records of the said Board as "In the Matter of Howell Chevrolet Company and International Association of Machinists, District Lodge, No. 727, Case No. 21-CA-794; and In the Matter of Howell Chevrolet Company, Employer and International Association of Machinists, District Lodge No. 727, petitioner, Case No. 21-RC-1146," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 22nd day of October in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

Returns on service of Writ attached.

[Endorsed]: Filed November 7, 1951.

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Figure 1. The effect of the concentration of the solution on the rate of the reaction.

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Figure 1. Aerial photograph of the study area. The area is divided into four quadrants by the main road and the river. The area is divided into four quadrants by the main road and the river. The area is divided into four quadrants by the main road and the river.

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No. 13140

**United States
Court of Appeals
For the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

VS.

**HOWELL CHEVROLET COMPANY, a Corpora-
tion,**
Respondent.

**Petition for Enforcement of Order of the
National Labor Relations Board**

**Proceedings Had in the United States Court of Appeals
for the Ninth Circuit**

THE
COURT OF
COMMONS
IN PARLIAMENT ASSEMBLED

AN ACT TO AMEND THE
LAW RELATIVE TO THE
MAGISTRATES

IN THE
MAGISTRATES
ACT, 1889

ENACTED BY THE
QUEEN'S MOST EXCELLENT
MAGESTY

IN THE
THIRTIETH YEAR OF HER
MAJESTY

United States Court of Appeals
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Wednesday, October 22, 1952.

Before: Stephens and Pope, Circuit Judges;
Harrison, District Judge.

ORDER OF SUBMISSION

Ordered, petition to enforce presented by Mr. Marcel Malliet Prevost, Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. Erwin Lerten, counsel for respondent, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, February 26, 1953.

Before: Stephens and Pope, Circuit Judges;
Harrison, District Judge.

ORDER DIRECTING FILING OF OPINIONS
AND FILING AND RECORDING OF
DECREE

Ordered that the typewritten opinion and concurring opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinions rendered.

United States Court of Appeals
for the Ninth Circuit

No. 13,140

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

HOWELL CHEVBOLET COMPANY,

Respondent.

Feb. 26, 1952

On Petition for Enforcement of Order of the
National Labor Relations BoardBefore: Stephens and Pope, Circuit Judges, and
Harrison, District Judge.

Pope, Circuit Judge.

OPINION AND CONCURRING OPINION

Respondent is a California corporation which operates an automobile agency and repair and service shop at Glendale, California. It operates under a non-exclusive agreement with General Motors Corporation to sell Chevrolet cars and trucks. It is supplied with new cars and trucks from an assembly plant maintained at Van Nuys, California, where all of the new cars and trucks purchased by respondent were assembled and the process of manufacture completed. Approximately 43 per cent of the component parts of automobiles and trucks which were shipped to the Van Nuys plant and used in the assembling and manufacturing process there carried on, were obtained from

points located outside of California. All of the respondent's sales were made within California.

Upon the threshold we are confronted with the contention that the respondent is not subject to the jurisdiction of the Board. We think that the record requires an affirmance of the Board's findings of jurisdiction. In *National Labor Relations Board v. Ford Motor Co.*, 305 U. S. 57, the court found jurisdiction in respect to the activities of a local Union within the State where it operated, but while the respondent, operating at Santa Monica, California, purchased all of its raw materials from the Hook and Lader Corporation at Los Angeles, yet the latter organization shipped all of such materials into the State from outside points. The difference here, of course, is that the Van Dyne assembly plant does not bring into the State completed automobiles but assembles the assembly and manufacture there of new cars and trucks and 42 per cent of whose component parts are shipped in from outside points.

The Trial Examiner set forth the facts as follows: "The Chevrolet Division—General Motors Corporation—maintains a new car and truck assembly plant at Van Dyne, California, from which the Respondent obtains its new cars and trucks. For the fiscal year ending September 30, 1930, motor vehicle production parts, parts and accessories valued in excess of \$2,000,000 were shipped to the said Van Dyne plant, of which amount approximately 42 per cent were shipped from points located outside the State of California. During the aforesaid fiscal year, the Respondent's purchases from Chevrolet Motor Division—General Motors Corporation—amounted to more than \$1,500,000 but were less than \$2,000,000."

We think that the difference between this and the Townsend case is one of degree only and not of substance. Another aspect present here, a circumstance not disclosed in the Townsend case, is that respondent operated under a dealer's agreement with General Motors Corporation pursuant to which the latter exercises control over the respondent's capital requirements, place of business, hours, service facilities, personnel, signs and local area advertising. The findings of the Board recite: "The Respondent is one of a limited number of dealers selling Chevrolet products, and, by virtue of its contractual relationship with Chevrolet Motor Division-General Motors Corporation, is an integral part of that corporation's national system of distribution. Under the foregoing circumstances and on the basis of the entire record, we find that the Trial Examiner, that the respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over the Respondent." The contractual relationship thus referred to is substantially the same as the automobile sales agreement described in *National Labor Relations Board v. Ken Rose Motors* (1 cir.), 193 F. 2d 769, which the court said "ties the respondent into a vast national network of an integrated distribution system which affects commerce."

However, on January 20, 1953, the Court of Appeals for the Sixth Circuit handed down its decision in *National Labor Relations Board v. Bill Daniels, Inc.*, F. 2d, which expressly dis-

approved the *Kam Rose Motors* decision. Speaking of the Board's contention based on the *Kam Rose* case, the court said: "[I]n order to be an integral part of Ford, these dealers would have to be either an employee or agent of the manufacturer. It is not contended that it is an employee and there is no evidence that it is an agent. The contract in essence is a contract between vendor and purchaser. The fact that the dealer and the manufacturer co-operate to avail themselves of the privilege of national advertising is so small an element in the operation that it does not affect the conclusion that the work done is local."

We think that this is not an answer to the real question here posed. For in our view the focal inquiry must be whether the employer's activities bear such "a close, intimate and substantial relation to trade, traffic and commerce among the states" that "any widespread application of the practices here charged might well result in substantially decreasing the influx of materials" into the state. We think that the impact of automobile sales agreements of the kind here involved upon that question is not dependent upon whether these agreements square with common law concepts of principal and agent, or employer and employee. Rather, it seems to us, the important matter is, how does the arrangement work? Is the tie-up between respondent and General Motors Corporation, accomplished by this agreement, regardless

²The quoted language is from *Labor Board v. Denver Bldg. Council*, 341 U.S. 675, 684.

of what it could be called under the traditional nomenclature used by lawyers, nevertheless such that the Board's finding that respondent "is an integral part of that corporation's national system of distribution," has "warrant in the record" and a reasonable basis in law." *Labor Board v. Hearst Publications*, 322 U.S. 111, 131.² We think the answer is yes.

Both because this court's decision in the *Townsend* case, *supra*, controls us here, and because the

In the case the question was whether certain newspaper vendors were "employees" within the meaning of the National Labor Relations Act. Reversing this court's decision that they were independent contractors, since the word "employee" must be "given its conventional meaning as developed under the common law," the Supreme Court held the newsboys were "employees" and said: "It will not do, for deciding this question as one of uniform national application, to import wholesale the traditional common-law conceptions or some distilled essence of their local variations as exclusively controlling limitations upon the scope of the statute's effectiveness. * * * Congress recognized those economic relationships cannot be fitted neatly into the containers designated 'employee' and 'employer' which an earlier law had shaped for different purposes. * * * In this light, the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as 'employee,' 'employer,' and 'labor dispute,' leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications. * * * That term [employee], like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relation-

Board's finding on the effect of this contractual relationship on the flow of interstate commerce is one which we should not disturb, we hold that the Board's finding that the respondent was engaged in commerce within the meaning of the Act must be affirmed by us.

In January, 1950, the International Association of Machinists, here called the Union, initiated af-

ship. "Where all the conditions of the relation require protection, protection ought to be given." * * * It is not necessary in this case to make a completely definitive limitation around the term 'employee.' That task has been assigned primarily to the agency created by Congress to administer the Act. Determination of 'where all the conditions of the relationship require protection' involves inquiries for the Board charged with this duty. * * * Undoubtedly questions of statutory interpretation, especially when arising in the first instance, in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute. * * * But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a 'member of a crew' (*South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251) or that he was injured 'in the course of employment' (*Parker v. Motor Boat Sales*, 314 U.S. 244) and the Federal Communications Commission's determination that one company is under the 'control' of another (*Rochester Telephone Corp. v. United States*, 307 U.S. 125), the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

sorts to secure members from among the respondent's employees. Meetings were held at which Claude Leonard, one of the employees, was selected as shop steward or union chairman. By January 21, 1950, 15 of the 25 employees in the bargaining unit² had signed cards designating the Union as their collective bargaining representative. The Union under that date wrote to the respondent claiming to be the majority representative of the employees, and asked for recognition and for a conference to discuss an agreement. On the same day the Union filed a representation petition with the Board. Respondent received the Union letter on February 1, 1950, but did not answer it because, as it now says, it in good faith doubted the Union's majority claim.

Following the incidents just mentioned, there occurred the acts which the Board has found constituted a violation by the respondent of §8 (a) (1), (3) and (5) of the National Labor Relations Act as amended.³ With respect to the claimed restraint

²The unit found appropriate by the Board consisted of all respondent's employees except supervisors and certain non-operating employees.

³§8 (a) It shall be an unfair labor practice for an employer— (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in §7; * * * (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * * (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of §9 (a). * * *

and coercion and interference with the employees in the exercise of their right of self-organization, guaranteed in §7,⁴ the Board asserts that the respondent's president, its attorney, its service manager and the foreman of its body shop, "all acted to bring home to the employees the futility of their supporting the union and the advantage which would accrue to them if they kept away from it." More specifically, the Board found that respondent's president, Jackson Howell, before the election which the Board ordered on the Union's petition mentioned above, urged an employee to "vote in favor of the plant," and said to him that if the employee would do so, Howell would see that the employees "got a raise in time." The Board also found that Howell had promised to other employees that if the Union were defeated the employees would receive a raise.

The Board also found that one Borden, respondent's service manager, likewise promised a raise in pay for the employees if the Union were defeated, and that he had stated in the presence of two em-

"§7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3)."

ployees that if the Union were victorious at the election, respondent would shut down its operations.

Other statements along the same line with which the Board has charged the respondent, and on which it has made findings against it, are those of one Ogen who bore the title of "body shop foreman" in the respondent's organization. The testimony before the Board disclosed that when employee Leonard, who, as above stated, had been selected as an officer of the Union, showed up wearing his Union button, Ogen commented upon the button and made remarks to the effect that President Howell had told Ogen that the former was going to fire anybody who joined the Union; that Ogen did not want to be near Leonard while the latter wore the button because he did not want to get fired. There was also much evidence as to a number of talks which the respondent's attorney Potruch made to the employees, first when they were all assembled in one body, and later to separate groups. In these talks Potruch undertook to state at considerable length the views of respondent with regard to the Union's organizing activities and the forthcoming election.

In the course of his address to the employees, the attorney stated that it was the view of the respondent that because the Company was one operating solely within the State, the Board had no jurisdiction; that the respondent would contest the jurisdiction of the Board, and that perhaps it would be found that in order to get the issue before

a court, the respondent would have to do something which would cause it to be cited for an unfair labor practice. The attorney's speech to the employees contained a lengthy discussion of the rights of the Union and of the employer under the Act; statements that there could not be any changes in wages or working conditions during the period that was required to test the jurisdiction of the Board, and that it was the attorney's personal opinion that if he were an employee he would handle his problems not through a union but by direct dealing with the employer. The Board did not find any violation of the Act in the portions of the speech just mentioned, but it did find that at one of the group meetings which the attorney had with a number of the employees, the attorney stated that "there would be a new deal after the first of the month," that is to say, after the election. The Board construed this to be a promise of benefit violative of §8 (a) (1) of the Act.

With respect to the charge of discrimination in violation of §8 (a) (3), the Board found that the employee Leonard above mentioned, was discharged by the respondent because of his leadership in union activities among the employees. As to the refusal to bargain in violation of §8 (a) (5), the Board found that respondent's failure to respond to the Union's letter of February 1, 1950, was not because of any good faith doubt of the Union's majority, or because it was awaiting the outcome of the representation proceedings before the Board, but that on

the contrary, it was pursuant to its determination to deny the jurisdiction of the Board and to litigate that issue; that the respondent ignored the Union's request for recognition and embarked on the campaign of unfair labor practices previously mentioned, in consequence of which, the election of June 1, 1950, which the Union lost, did not represent the free and uncoerced choice of the employees.

By way of remedy the Board set the election aside, ordered the reinstatement of employee Leonard with back pay, directed the respondent to cease and desist from discouraging membership in the Union, from coercing its employees and refusing to bargain collectively with the Union and directed the posting of certain notices.

Respondent contends that the evidence is insufficient to support the Board's findings of restraint and coercion. The principal attacks upon these findings relate to the testimony concerning the remarks of Attorney Potruch and the conduct of Foreman Ogen. Concerning Potruch, it is contended that in substance his talks amounted to no more than expressions of the views of a respondent that the Board had no jurisdiction because of the local character of its business. It is said that under §8 (c) such an expression of "any views, arguments or opinion" * * * shall not constitute or be evidence of an unfair labor practice." As for the anti-union remarks of Ogen, respondent says that his conduct is not imputable to it; that the only evidence with respect to Ogen's supervisory authority is that he was called a "foreman"; that there was no evidence

that Ogen had any of the powers which are listed in that portion of the Act defining the term "supervisor." (Title 29, §152 (11).)

○ We find it unnecessary to resolve this controversy with respect to the effect of the statements by Potruch and by Ogen. It is apparent that the Board attached but minor significance to the remarks of the attorney; as for Ogen, his acts might well be such as to be chargeable to his employer under the rule of *I. A. of M. v. Labor Board*, 311 U.S. 72, 79, 81, and of *National Labor Relations Board v. Security W. & Cold S. Co.*, (9 cir.), 136 F. 2d 829, 833. But wholly apart from those considerations, it is clear that the Board's findings with respect to this aspect of the case, are supported by the evidence relating to statements of the respondent's president and of its service manager, Bordeau.

Respondent argues that the Board should not have followed the trial examiner in believing certain witnesses who testified that the remarks were in fact made by these men: Respondent complains bitterly because "the Board has chosen to believe Smith's version rather than the truthful version of Howell," and refers to Smith as one "whom we have shown to be a drunkard with a strong animus toward respondent; he is unworthy of belief." The Board also credited the testimony of the same witness who testified that he heard Bordeau make the statement that if the shop went union the respondent would shut its doors. Respondent argues that "the Board becomes positively ridiculous in credibility resolution," because the witness himself did

not participate in the conversation but merely overheard it, and because the statement was made at a cocktail bar.

Of course it is not the function of this court to say that the Board and the trial examiner have believed the wrong witnesses. "So long as the Board's findings are supported by substantial evidence on the record appraised as a whole, they will not be disturbed. When supported by credible evidence, the Board's choice between two conflicting views may not be displaced, 'even though the court would justifiably have made a different choice had the matter been before it *de novo*.'" *National Labor Relations Board v. Nabors* (5 cir.), 196 F. 2d 272, 275, and cases there cited. See also *National Labor Relations Board v. Dinion Coil Co.* (2 cir.), F. 2d (decided December 24, 1952).

The same considerations must dispose of respondent's contention that there is no substantial evidence to support a finding that the employee Leonard was discharged on account of his union activities. The testimony on behalf of respondent was that Leonard, who had been assigned to do "brake work" was discharged and the duties formerly performed by him were turned over to another employee Herrick who had been doing "front end and frame straightening work" because the latter was better qualified to do the combined job, and the amount of work was decreasing so that there was not enough to keep both men busy. It is strenuously urged that there is no evidence that

the employer was conscious of Leonard's union activities and that in any event other employees including Herrick wore their union buttons and were not discharged.

The Board's finding of an unfair labor practice in this regard was based upon the evidence that Leonard was in fact a very competent mechanic and fully capable of performing not only the brake work which he had been doing but the work that Herrick was doing as well. The button which Leonard wore and to which Foreman Ogen took such violent exception, was not an ordinary union button but a shop steward's button, which indicated his leadership in the union activities. Coincident with the commencement of the organizing activities, the employer began to take work normally assigned to Leonard, who worked on a piece time basis, away from him and to give it to the men on the lubricating rack. The work of the shop, instead of falling off, increased after Leonard's discharge; Herrick's earnings nearly doubled, and he found it necessary to call in an outside worker four times in order to keep his work up. We think that substantial evidence supports the Board's findings as to the reason for Leonard's discharge.

Respondent also attacks the Board's findings as to the respondent's refusal to bargain. It says that it was not established that on January 31, 1950, when there were 29 employees in the unit, 15 of them had designated the union as their authorized representative. Proof of membership in the union was established by means of the union authoriza-

tion cards which the employees signed. One of the cards received in evidence was that purporting to be signed by employee Malstrom. Respondent says that there was no testimony to prove the authenticity of the card because no one testified that Malstrom signed it. The evidence was that early on the morning of January 31, 1950, Leonard handed the card in question to Malstrom and asked him to sign it; that Malstrom said he would sign it and return it. Before 10 a.m. of the same day, Malstrom brought the card to Leonard. Malstrom's name had been signed to the card when it was thus returned. Obviously, the contention that there was lack of authenticity is without basis for no matter who wrote Malstrom's name on the card, Malstrom clearly adopted it as his own signature.

We think that the evidence abundantly supports the Board's finding that the respondent did not withhold its recognition of the Union because of a good faith doubt of the Union's majority, and that its conduct generally was motivated by a desire to gain time in which to destroy the Union's majority. The respondent had the right to question the Board's jurisdiction over its operations and to test that right in the courts. It also had the right to tell its employees of its intentions in that regard and that if the Board found against it, it would litigate that issue to the respondent's "last dollar" through all the courts to the Supreme Court. But it is plain that the respondent so made this undertaking its primary purpose and objective and so continuously kept its eye upon this legal issue that it over-

looked its duty in good faith to bargain and prepare to bargain with the Union.

Respondent asserts that because the Union did not withdraw its representation petition and participated in the election, the Union wrived the unfair labor practices here discussed and that it was improper for the Board to set aside the election. The processing of a representation petition, however, is a matter in which the decisions to be made relate to policies which Congress has in general committed to the discretion of the Board. We think that the action of the Board was within its discretion and within the scope of its power as set forth in *Joy Silk Mills v. National Labor Relations Board*, 185 F. 2d 732, 741.

Finally, respondent argues that it was denied a fair hearing and due process of law because of the partiality and unfairness of the trial examiner. It objects to the action of the trial examiner in frequently asking questions of witnesses and says that on those occasions the answers elicited generally aided the General Counsel. Much of the arguments upon this aspect of the case is based upon the proposition that the trial examiner must have been biased and prejudiced and that he must have predetermined the issues against respondent because he so consistently found against it and resolved questions of credibility in favor of those who testified on the other side. Respondent maintains that the trial examiner was obliged to accept as true statements made by its own witnesses when those statements were not contradicted. It says: "It is

well settled law that where a witness' testimony is not contradicted, a trier has no right to refuse to accept it." This is an ancient fallacy which somehow persists despite the courts' numerous rulings to the contrary. It overlooks the significance of the carriage, behavior, bearing, manner and appearance of a witness—his demeanor—when his testimony is given orally in the presence of the trier of facts. As stated by the Court of Appeals for the Second Circuit in a recent case, *Dyer v. MacDougall*, F. 2d, (Dec. 31, 1962): "Moreover, such evidence may satisfy the tribunal, not only that the witness' testimony is not true, but that the truth is the opposite of his story; for the denial of one, who has a motive to deny, may be uttered with such hesitation, discomfort, arrogance or defiance, as to give assurance that he is fabricating, and that, if he is, there is no alternative but to assume the truth of what he denies." That court took cognizance of this in *National Labor Relations Board v. Dinion Coil Co.*, *supra*, a case in which the Board's examiner, or in his interposition to ask questions, many respects similar to the one now before us.

We are unable to observe in the conduct of the trial of witnesses, anything to indicate any unfairness or desire to do other than ascertain the facts. That he uniformly credited testimony favorable to the Board and uniformly discredited the testimony of the respondent is not sufficient to warrant a conclusion that he was biased and prejudiced against respondent. *Labor Board v. Pittsburg S.S. Co.*, 337 U.S. 656, 659.

Enforcement of the Board's order is granted.

Stephens, Circuit Judge, concurring:

Once the business of the automobile dealer is held to be in interstate commerce, there is nothing to do but order the Board's order enforced. And this we must do under *National Labor Relations Board v. Hearst Publications, Inc.*, 1944, 322 U.S. 111, and *National Labor Relations Board v. Townsend*, 1950, 183 F. 2d 378.

Notwithstanding, I remain unconvinced that the word "employee" actually means more in the Wagner Act than elsewhere (*Hearst case*) or that a simple business transaction within a state is interstate commerce because of a fine-spun tracing of a remotely possible and unmeasurable relation to trade across a state line (*Townsend case*). Judge Harrison joins me in this concurrence.

[Endorsed]: Opinion and Concurring Opinion.
Filed Feb. 26, 1953. Paul P. O'Brien, Clerk.

**United States Court of Appeals
for the Ninth Circuit****No. 13,140****NATIONAL LABOR RELATIONS BOARD,****Petitioner,****vs.****HOWELL CHEVROLET COMPANY,****Respondent.****DECREE**

On petition for enforcement of an Order of the National Labor Relations Board.

This cause came on to be heard on the petition of the National Labor Relations Board, filed herein on October 22, 1951, for enforcement of its order herein of July 23, 1951, and on the answer of respondent Howell Chevrolet Company, filed November 5, 1951, to said petition, and on the transcript of record herein, briefs filed by respective parties, and oral arguments had thereon, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the said petition to enforce be, and hereby is granted, and that the Respondent, Howell Chevrolet Company, Glendale, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in International

Association of Machinists, District Lodge No. 727, or any other labor organization of its employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

(b) By means of interrogation, threats of reprisal, promises of benefit, or in any other manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, or to refrain from the exercise of such rights.

(c) Refusing, upon request, to bargain collectively with International Association of Machinists, District Lodge No. 727, as the exclusive representative of all its employees at its Glendale, California, plant, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Association of Machinists, District

Lodge No. 727, as the exclusive representative of all the employees in the above-described appropriate unit, and if an understanding is reached, embody such understanding in a signed agreement.

(b) Offer to Claude Leonard immediate and full reinstatement to his former or a substantially equivalent position without prejudice to his seniority or other rights or privileges.

(c) Make whole Claude Leonard, in the manner set forth in the section of the order of the National Labor Relations Board entitled "The Remedy," for any loss of pay which he may have suffered by reason of the Respondent's discrimination against him.

(d) Upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Decree.

(e) Post in its plant at Glendale, California, copies of the notice attached hereto and marked "Appendix A." Copies of said notice to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by the Respondent, be posted by the Respondent immediately upon receipt thereof and be maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to

insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Decree what steps the Respondent has taken to comply herewith.

Appendix A

Notice to All Employees

Pursuant to a Decree of the United States Court of Appeals, Enforcing a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in International Association of Machinists, District Lodge No. 727, or in any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment, or any term or condition of employment, because of their membership in, or activity on behalf of, any such labor organization.

We Will Not by means of interrogation, threats or reprisals, promises of benefits, or in any manner, interfere with, restrain, or coerce our employees in the exercise of their right to self-organization; to form labor organizations, to join or assist International Association of Machinists, District Lodge No. 727, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted

activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the National Labor Relations Act.

We Will offer to Claude Leonard immediate reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges previously enjoyed, and will make him whole for any loss of pay he may have suffered as a result of the discrimination against him.

We Will bargain collectively, upon request, with the above-named union as the exclusive representative of all our employees in the bargaining unit described herein, with respect to rates of pay, wages, hours of work, or other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The Bargaining Unit is:

All our employees, excluding salesmen, office and clerical employees, professional employees, guards, and supervisors as defined by the National Labor Relations Act.

All our employees are free to become, or refrain from becoming members of the above-named union or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or

tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any labor organization.

Dated.....

**HOWELL CHEVROLET
COMPANY,**
(Employer)

By

(Representative)
(Title)

This notice must remain posted for 60 days from date hereof, and must not be altered, defaced, or covered by any other material.

United States Court of Appeals
for the Ninth Circuit

**CERTIFICATE OF CLERK, U. S. COURT OF
APPEALS FOR THE NINTH CIRCUIT,
TO RECORD CERTIFIED UNDER RULE
38 OF THE REVISED RULES OF THE
SUPREME COURT OF THE UNITED
STATES**

I, Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 357 pages, numbered from and including 1 to and including 357 to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of March, 1953.

[Seal]

PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 703

HOWELL CHEVROLET COMPANY, a Corporation, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

ORDER ALLOWING CERTIORARI—Filed May 18, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8917)

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HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

1953

No.

708

34

HOWELL CHEVROLET COMPANY, a Corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

**Petition for a Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit.**

FREDERICK A. POTRUCH,

FINDLAY A. CARTER,

ERWIN LESTEN,

520 Story Building,

610 South Broadway,

Los Angeles 14, California,

Counsel for Petitioner.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1952.

No. _____

HOWELL CHEVROLET COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition for a Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit.

Howell Chevrolet Company, Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on February 26, 1953.

Opinions Below.

The order of the National Labor Relations Board [R. 54] was issued on July 23, 1951, and is not reported. The opinion of the Court of Appeals [R. 334] has not been reported as of this date.

Jurisdiction.

The judgment of the Court of Appeals was entered on February 26, 1953 [R. 352]. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1251(1).

Questions Presented.

Whether the National Labor Relations Act, as amended is applicable to franchised retail automobile dealers who purchase and sell all of their merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealers are assembled within the same state.

Statute Involved.

The pertinent statutory provisions are printed in Appendix A, *infra*.

Statement.

Upon charges filed by the International Association of Machinists, a labor organization, the National Labor Relations board, after the usual proceedings, issued its decision and order in which it found that Petitioner had violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended. The National Labor Relations Board found, with respect to Petitioner's business, that Petitioner is engaged in the sale and distribution at Glendale, California, of new Chevrolet motor vehicles, parts and accessories, under a dealer's agreement with Chevrolet Motor Division, General Motors Corporation. This agreement provides for certain controls as to the Petitioner's capital requirements, place of business, hours, servicing facilities, personnel, signs, and local area advertising. The Petitioner is one of a limited number of dealers selling Chevrolet products. [R. 55-56.] All the Petitioner's sales and purchases are made within the State of California. During the year 1949, the Petitioner purchased from the Chevrolet Motor Division, General Motors

Corporation, new Chevrolet automobiles and trucks and parts and accessories with a value in excess of one million dollars. The new cars and trucks purchased and sold by Petitioner are assembled at the Van Nuys, California plant of Chevrolet Division, General Motors Corporation. Approximately 43 percent of the parts used to manufacture new cars and trucks at the Van Nuys, California plant are shipped from points located outside the State of California. [R. 16-17.]

Upon the basis of these facts the National Labor Relations Board rejected Petitioner's contention that it was not subject to the jurisdiction of the Board, chiefly upon the ground that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation. [R. 56.]

The Court below granted a decree of enforcement of the order of the National Labor Relations Board. [R. 352.] The Court held that Petitioner was subject to the jurisdiction of the National Labor Relations Board because it was of the opinion that it could not disturb the Board's finding that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation under the authority of *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111 and because it felt bound by its decision in *N. L. R. B. v. Townsend*, 185 F. 2d 378, cert. den., 341 U. S. 909. Judge Stephens wrote a concurring opinion, in which Judge Harrison joined, in which he inferred that he personally was of the opinion that Petitioner was not subject to the jurisdiction of the National Labor Relations Board but that the Board's order must be enforced under the authority of the *Hearst* and *Townsend* cases, *supra*.

Specification of Error to Be Urged.

The Court erred in holding that the National Labor Relations Act, as amended is applicable to franchised retail automobile dealers who purchase and sell all their merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealers are assembled within the same state.

Reasons for Granting Writ.

1. The decision of the Court below in the instant case is directly in conflict with the decision of the Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Bill Daniels, Inc.*, F. 2d (decided January 20, 1953), where it was held, on substantially the same facts as in the instant case, that a franchised retail automobile dealer is not subject to the jurisdiction of the National Labor Relations Board. This conflict was conceded in the Court below. [R. 336-337.]

2. Clearly, the question presented is of importance in the administration of the National Labor Relations Act, as amended. Settlement of the question by this Court is plainly in the public interest, since it will not only determine whether approximately 40,000 franchised retail automobile dealers are subject to the provisions of the National Labor Relations Act, as amended, but also it will determine whether many other thousands of franchised retail merchants, *e. g.*, retailers of appliances, are subject to the provisions of that Act.

3. The decision of the Court below is believed to be erroneous and the conflicting decision of the Court of Appeals for the Sixth Circuit in *N. L. R. B. v. Bill Daniels, Inc.*, *supra*, correct. Moreover, the decision below probably conflicts with applicable decisions of this Court.

In *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, Mr. Chief Justice Hughes stated at page 31:

"The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

Mr. Chief Justice Hughes continued at page 37:

"Undoubtedly the scope of this power (of Congress over intrastate activities) must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

However, if construed in accordance with the opinion of the Court below in this case the constitutional term "interstate commerce" will lose its meaning and the boundary between State and Nation will be obliterated. As stated by Judge Stephens in his concurring opinion in this case in the Court below:

"I remain unconvinced . . . that a simple business transaction within a State is interstate commerce because of a fine-spun tracing of a remotely possible and immeasurable relation to trade across a state line" [R. 351.]

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Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FREDERICK A. POTRUCH,

FINDLAY A. CARTER,

ERWIN LERTEN,

Counsel for Petitioner.

April 6, 1953.

APPENDIX.

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. 141, Supp. IV, Secs. 151 *et seq.*) are as follows:

"DEFINITIONS.

"Sec. 2. When used in this Act—

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory or between points in the same State but through any other State or any Territory or the District of Columbia, or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Service of the within and receipt of a copy
thereof is hereby admitted this _____ day of
April, A. D. 1953.

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IN THE
Supreme Court of the United States

October Term 1953.

No. 34.

HOWELL CHEVROLET COMPANY, a Corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

**On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit.**

BRIEF FOR THE PETITIONER.

Opinions Below.

The order of the National Labor Relations Board [R. 54-57] was issued on July 23, 1951, and is reported at 95 N. L. R. B. 410. The opinion of the Court of Appeals [R. 334-351] is reported at 204 F. 2d 79.

Jurisdiction.

The judgment of the Court of Appeals was entered on February 26, 1953. The petition for a writ of certiorari was filed April 8, 1953, and was granted May 18, 1953. The jurisdiction of this Court rests on 28 U. S. C., Section 1251(1).

Question Presented.

Whether the National Labor Relations Act, as amended is applicable to a retail automobile dealer who purchases and sells all of his merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealer are assembled within the same state.

Statute Involved.

The pertinent statutory provisions are printed in Appendix A, *infra*.

Statement.

Upon charges filed by the International Association of Machinists, a labor organization, the National Labor Relations Board, after the usual proceedings, issued its decision and order in which it found that Petitioner had violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act, as amended. The National Labor Relations Board found, with respect to Petitioner's business, that Petitioner is engaged in the sale and distribution at Glendale, California, of new Chevrolet motor vehicles, parts and accessories, under a dealer's agreement with Chevrolet Motor Division, General Motors Corporation. This agreement provides for certain controls as to the Petitioner's capital requirements, place of business, hours, servicing facilities, personnel, signs, and local area advertising. The Petitioner is one of a limited number of dealers selling Chevrolet products [R. 55-56]. All the Petitioner's sales and purchases are made within the

State of California. During the year 1949, the Petitioner purchased from the Chevrolet Motor Division, General Motors Corporation, new Chevrolet automobiles and trucks and parts and accessories with a value in excess of one million dollars. The new cars and trucks purchased and sold by Petitioner are manufactured at the Van Nuys, California plant of Chevrolet Division, General Motors Corporation [R. 16]. Approximately fifty-seven percent of the parts used to manufacture new cars and trucks at the Van Nuys, California plant of General Motors Corporation are shipped from points located within the State of California [R. 99].

Upon the basis of these facts the National Labor Relations Board rejected Petitioner's contention that it was not subject to the jurisdiction of the Board, chiefly upon the ground that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation [R. 56].

The Court below granted a decree of enforcement of the order of the National Labor Relations Board [R. 352]. The Court held that Petitioner was subject to the jurisdiction of the National Labor Relations Board because it was of the opinion that it could not disturb the Board's finding that Petitioner is an integral part of the national system of distribution of the Chevrolet Motor Division, General Motors Corporation under the authority of *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111 and because it felt bound by its decision in *N. L. R. B. v. Townsend*, 185 F. 2d 378, cert. den., 341 U. S. 909.

Judge Stephens wrote a concurring opinion, in which Judge Harrison joined, in which he inferred that he personally was of the opinion that Petitioner was not subject to the jurisdiction of the National Labor Relations Board but that the Board's order must be enforced under the authority of the *Heard* and *Townsend* cases, *supra*.

Specification of Error to Be Urged.

The Court below erred in holding that the National Labor Relations Act, as amended is applicable to a retail automobile dealer who purchases and sells all his merchandise within the boundaries of one state, where the motor cars and trucks sold by the automobile dealers are assembled within the same state.

Summary of Argument.

The Petitioner makes all of its purchases and sales within the State of California. It is thus clear that the Petitioner is not itself engaged in interstate commerce.

The Court below taxed its conclusion that Petitioner was subject to the jurisdiction of the Board in large part upon the Board's finding that Petitioner was an integral part of the national system of distribution of General Motors Corporation. Petitioner is an independent business and its relation with General Motors Corporation is merely that of purchaser and vendor. The record does not indicate the effect, if any, upon General Motors Corporation if Petitioner ceased to sell the products of that corporation. Thus, any conclusion reached with respect to this issue must be based upon mere conjecture.

The products sold by Petitioner have never moved in the stream of commerce. It is true that these products have incorporated therein parts and materials which have been transported in interstate commerce. However, to hold that this fact standing alone subjects Petitioner to regulation under the commerce clause would make practically all interstate activities subject to control by the Congress. Such a construction of the commerce clause would destroy the distinction between domestic and interstate commerce, which the commerce clause itself has established. If the framers of the Constitution wished the Federal Government to have control over all commerce, they would have so provided.

If the system of dual sovereignty established by the Constitution is to be maintained a line must be drawn at some point between the power of the states and the power of the Federal Government to regulate. Petitioner is of the opinion that this line must be drawn here, in view of the fact that Petitioner makes all of its sales and purchases in one state, the products sold by Petitioner have never moved in the stream of commerce, and there has been no showing that it is necessary to regulate the business of Petitioner in order to regulate interstate commerce effectively. If the line is not drawn here, it can not be drawn anywhere.

ARGUMENT.

Petitioner's Business Does Not Affect Interstate Commerce.

The petitioner, a retail merchant, makes all of its purchases and sales within the State of California. Thus, Petitioner is not itself engaged in interstate commerce, since there is no transportation or shipment of commodities from one state to another. (*Id. Magazine Co. v. Hamilton*, 232 U. S. 40; *Exemption of Corporations & Taxation v. Ford Motor Co.*, 108 Mass. 558.) Further, the record in the instant case discloses that the commodities dealt in by Petitioner have never moved in the stream of commerce and no relationship has been shown between Petitioner's purely intrastate transactions and the effective regulation of interstate commerce. It is thus clear that jurisdiction cannot be based here upon the regulation of goods which have moved in commerce. (*Welling v. Jacksonville Paper Co.*, 317 U. S. 574; or the necessity of regulating interstate activities in order to make effective the regulation of interstate commerce. (*United States v. Dry*, 185 F. 2d 28 (C. A. 2).)

Petitioner recognizes that under the commerce clause (U.S. C. 8, § 2; Constitution of the United States) the Congress has the power to regulate interstate acts when such acts directly and substantially affect interstate commerce. However, there are no facts in the record from which such a conclusion can reasonably be reached. The Court below placed great emphasis upon the Board's finding that Petitioner is an integral part of the national system of distribution of General Motors Corporation. In *N. L. R. B. v. Bill Daniels, Inc., et al.*, 202 F. 2d 579

(C. A. 6), where the facts were substantially the same as in the instant case, the United States Court of Appeals for the Sixth Circuit effectively disposed of this argument in the following language:

"The Board contends also that the dealers involved are an integral part of the Ford Motor Company which is a unitary enterprise whose operations are substantially integrated. This contention has no merit. In order to be an integral part of Ford, these dealers would have to be under complete management of Ford. It is not contended that they are employees and there is no evidence in the record that the dealers are agents of Ford. The contracts in question are contracts between dealer and manufacturer.

The sales contract which expressly declares that the dealer is independent in his operations, does not establish a relationship of principal and agent. *Berkshire v. Ford Motor Co.*, 116 F. 2d 331, 29 (C. A. 10, 1942); *Waller, Inc. v. Chevrolet Motor Co.*, 3 F. 2d 409 (C. A. 10, 1944); *Ford Motor Co. v. Ford Motor Sales Co.*, 244 F. 2d 155 (C. A. 6). The provisions voluntarily negotiated for do not affect the question. The test of agency is whether the dealer represents Ford and has authority to bind Ford. Under this record there is no evidence to this effect.

"The official national arrangements made under the sales contract give it no interstate character. Respondents buy in Michigan, sell in Michigan and perform a local service."

A careful reading of the record also discloses that the only basis for this finding of the Board is the fact that Petitioner sells products manufactured by the General Motors Corporation. Thus, the same finding could be

made with respect to every person who sells commodities manufactured or sold by a person engaged in interstate commerce.

If this finding, then, were sufficient to subject a business to regulation under the commerce clause, it would make all retail merchants practically without exception, subject to regulation by the Congress. Under such an interpretation not only the traditional butcher, baker and candlestick maker, but also the shoe repairman in his shop and the bookbinder on the corner would be subject to the jurisdiction of the Board, for all of them deal in commodities which are produced by persons who are engaged in interstate commerce.

In view of the silence of the record on the subject, the effect of any of Petitioner's business upon interstate commerce must rest upon mere conjecture. The more plausible assumption is that the cessation of Petitioner's business would have no effect upon interstate commerce, in view of the large number of selling outlets which General Motors Corporation has in Petitioner's trading area and the highly competitive nature of the retail automobile business. The elimination of Petitioner from the market there would not affect the sales of the products of General Motors Corporation but would merely reduce the number of sellers of that product who are bidding for the available market.

As Board Member Murdoch stated in his dissenting opinion in *Johns Eves, Inc., et al.*, 84 N. L. R. B. 33:

"A labor dispute affecting the operations of one dealer and forcing him to purchase fewer cars from Ford would have a remote, rather than a direct effect upon commerce. It is questionable whether a work

stoppage at the place of any one dealer would have any effect, direct or indirect, on interstate commerce."

In fact, an assumption is necessary before one even reaches the conclusion that a controversy between Petitioner and his employees who are involved here will affect Petitioner's volume of sales of General Motors Corporation's products. The employees here involved are engaged solely in repairing all makes of automobiles at retail for local customers. These employees are not concerned with the sale or purchase of products. Accordingly, if these employees were to cease work, the sale or purchase of the products of General Motors Corporation would in no wise be affected. The cessation of work by the employees here involved could affect the sale or purchase of products only if their controversy with Petitioner were in some manner to spread to Petitioner's other employees. There are no facts in the record which could form the basis for such a finding.

Even if one is willing to make the assumption discussed in the preceding paragraph, two additional assumptions must be made before one reaches the conclusion that the unfair labor practice with which Petitioner is charged affects interstate commerce. First, it must be assumed that all persons in Petitioner's marketing area who sell the same products must become involved in a labor dispute at the same time. Otherwise, the impairment of Petitioner's sales will merely increase the sales, and hence the purchases, of his competitors. Second, it must be assumed that, in the case of each of Petitioner's competitors in his marketing area, the assumed labor dispute will reduce each competitor's sales of the products sold by Petitioner. There is not a scintilla of evidence in the

record which would lend support to any of these assumptions.

Thus, the Board's finding that Petitioner's business affects commerce is not supported by evidence in the record but rests upon a pyramid of groundless assumptions. Since there is not substantial evidence on the record considered as a whole to support the Board's finding that the alleged unfair labor practice committed by Petitioner affects commerce that finding should be set aside, *Universal Camera Corp. v. N. L. R. B.*, 340 U. S. 474.

Since the Board has limited jurisdiction, the facts supporting that jurisdiction must appear affirmatively from the record (*Danks v. Gordon*, 272 Fed. 821 (C. A. 2)). Since the record here does not affirmatively show that the Board does have jurisdiction, it must be presumed that the Board does not have jurisdiction in this case (*United States v. Green*, 107 F. 2d 19 (C. A. 9)).

If this Court permits the Board to continue to indulge in the assumptions made in this case, all business could be subjected to the jurisdiction of the Board, depending upon the whim of the Board in any particular case. If the Congress wished to give the Board this power it would have so provided in the National Labor Relations Act. Instead, the Congress chose to give the Board jurisdiction only over those businesses which affect commerce. Thus, the construction placed upon the National Labor Relations Act by the Board in this case would destroy the distinction between interstate and intrastate commerce created by the act itself.

In *Federal Trade Commission v. Bunte Brothers*, 312 U. S. 349, Mr. Justice Frankfurter, speaking for the Court stated,

"The construction of Section 5 urged by the Commission would thus give a Federal agency control over myriads of local businesses in matters heretofore traditionally left to local custom or local law.— An intrusion upon local conditions and local standards of such far-reaching import as involved here ought to await a clearer mandate from Congress."

There has been no such mandate from the Congress with respect to the subjecting of purely local businesses to the jurisdiction of the National Labor Relations Board. In fact, the Congress has made it clear that in passing the National Labor Relations Act it was not its intent to subject local business to its provisions.

In 1948 joint subcommittees of the House Committee on Expenditures in the Executive Departments and of the House Committee on Education and Labor were created to investigate the interpretation by Mr. Robert N. Denham, then General Counsel of the National Labor Relations Board, of the term "affecting Congress" as used in the National Labor Relations Act. On May 26, 1948, these subcommittees made a unanimous report (80th Cong., 2nd Sess., House Report No. 2050) which was unanimously approved and adopted by the full Committee on Expenditures. This report disclosed that Mr. Denham had stated that (pp. 5, 6),

"The present thought of the Board—is that it is a rare case in which business does not affect com-

merce in some degree and that where commerce is affected the Board has jurisdiction.— I can conceive of very few businesses over which there is not at least technical jurisdiction."

In its findings the subcommittee stated (p. 3 of House Report No. 2050):

"Your subcommittee is certain that it was not the intention of Congress to include in the jurisdiction of the National Labor Relations Board every small, local business which drew a small portion of its supplies or merchandise from beyond the borders of a State or Territory.—

"The subcommittee is of the opinion that this new interpretation proposed by the general counsel of the Board to be placed upon the term 'affecting commerce' is not warranted either by the previous history of interpretation and administration of the Wagner Act, by the debates on the bill or by the terms of the Act itself; that such interpretation is not necessary to effectuate the purposes of the Act.

"The subcommittee looks upon this proposed interpretation as an attempt by administrative interpretation, to give the country administrative law in the place and stead of law enacted by the Congress.—Our national history does not afford a more striking example of bureaucratic aggrandizement."

—II—

The Act Is Unconstitutional if It Is Construed as Applying to Petitioner.

By the very nature of the Constitution and the express provisions of the Tenth Amendment the Federal Government has only those powers which are delegated to it by the Constitution and all other powers are reserved to the states. If the Federal Government has any power to regulate the business of the Petitioner that power must come from Article I, Section 8, Subdivision 3 of the Constitution, which provides that the Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes." It is clear that Petitioner is not engaged in interstate commerce and that it is not necessary to regulate Petitioner's business in order to regulate interstate commerce effectively. The question which remains, then, is whether the business of Petitioner affects commerce to a sufficient extent to subject it to regulation by the Congress under the commerce clause.

As has been pointed out elsewhere in this brief, Petitioner has only a remote effect, if any, upon interstate commerce. The same reasoning which would subject Petitioner to regulation by the Federal Government under the commerce clause would subject all business to such regulation, since all business, regardless of its size, deals in some commodities which have been produced by a person engaged in interstate commerce. Such a construction would not only destroy our dual system of government but

also would destroy the distinction between intrastate and interstate commerce created by the commerce clause itself.

By the use of the Board's reasoning one could justify the regulation by the Federal Government of the minimum allowances to be given wives by their husbands. The argument would run as follows: In our society wives make most of the purchases. Most goods purchased at retail have been in the stream of commerce. Thus, the smaller the amount of money available for wives to spend, the smaller the volume of goods moving in commerce. It is true that the amount of money spent by any particular wife would have little effect upon commerce. However, if we consider all people similarly situated, i. e., all wives, the effect on commerce is substantial. It therefore follows that the commerce clause gives the Federal Government power to regulate minimum allowances given wives by their husbands.

In *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U. S. 1, Mr. Chief Justice Hughes stated at page 31:

"The grant of authority to the Board does not purport to extend to the relationship between all industrial employees and employers. Its terms do not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to burden or obstruct that commerce and, thus qualified, it must be construed as contemplating the exercise of control within constitutional bounds."

Mr. Chief Justice Hughes continued at page 37:

"Undoubtedly the scope of this power (of Congress over intrastate activities) must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon inter-

state commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

In *Schechter Poultry Co. v. United States*, 295 U. S. 495 at page 546, this Court stated:

"If the commerce clause were construed to reach all enter rises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government."

The Court continued at page 548 after citing several cases:

"While these decisions related to the application of the federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government."

In his concurring opinion in the *Schechter* case, which was joined in by Mr. Justice Stone, Mr. Justice Cardozo stated succinctly the principle involved here when he stated at page 554:

"I find no authority in that grant (the commerce clause of the Constitution) for the regulation of

wages and hours of labor in the intrastate transactions that make up the defendant's business.—There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.' Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. Cf., *Chicago Board of Trade v. Olsen*, 262 U. S. 1. There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our federal system."

The applicability of the principle established by this Court in the *Schechter* case to the instant case is clearly set forth in this Court's opinion in *Wrightwood Dairy Company v. United States*, 315 U. S. 110, where the Court stated at page 124,

"the defendants were not charged (in the *Schechter* case) with injury to interstate commerce or interference with persons engaged in that commerce, and that the acts charged had no different relation to or effect upon interstate commerce than like acts in any other local business which handles commodities brought into the State."

So here Petitioner is not charged with injury to interstate commerce or interference with persons engaged in that commerce and Petitioner's business has no different relation to or effect upon interstate commerce than that of any other local business.

A reading of the political literature at the time of the adoption of the Constitution shows clearly that the founders of our Republic did not intend to confer upon the Federal Government the broad powers claimed by the Board here. Alexander Hamilton, the leading proponent of a strong federal state, wrote in *The Federalist Papers* No. XVII,

"The administration of private justice between the citizens of the same state; the supervision of agriculture, and of concerns of a similar nature; all those things, in short, which are proper to be provided for by local legislation, can never be the desirable care of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected.—"

So, too, James Madison wrote in *The Federalist Papers*, No. XLIV,

"But ambitious encroachments of the federal government on the authority of the state governments would not excite the opposition of a single state or of a few states only. They would be signals of general alarm.—But what degree of madness could ever drive the federal government to such an extremity?"

"The only refuge left for those who prophesy the downfall of the state governments, is the visionary supposition, that the federal government may previously accumulate a military force for the projects of ambition."

There are some who state that the sole question to be answered is the wisdom of the use of the Federal powers in a given situation. Such persons take the position that the question is a political one. If the people wish to change the law they can always elect different representatives who are in accord with their wishes. If we are convinced by such arguments, it means the end of our system of constitutional government. The people are given the power by the Constitution itself to either enlarge or contract the powers of the Federal Government. However, until they do the Constitution is and must be, "The Supreme Law of the Land." Unless we hold fast to this central idea of our form of government, we face political anarchy.

This view of our Constitution is found in the writings of three of our greatest presidents. Thus George Washington stated in his Farewell Address,

"If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Thomas Jefferson wrote on the same subject,

"I consider the foundation of the Constitution as laid on this ground. That 'all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.' To take a single step beyond the boundaries

thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any delegation." (Ford Writings of Thomas Jefferson, Vol. V, p. 285.)

Andrew Jackson stated in his Farewell Address, in the same vein,

"It is well known that there have always been those amongst us who wish to enlarge the powers of the General Government, and experience would seem to indicate that there is a tendency on the part of this Government to overstep the boundaries marked out for it by the Constitution." Its legitimate authority is abundantly sufficient for all the purposes for which it was created, and its powers being expressly enumerated, there can be no justification for claiming anything beyond them. Every attempt to stretch power beyond these limits should be promptly and firmly opposed, for one evil example will lead to other measures still more mischievous; and if the principle of constructive powers or supposed advantages or temporary circumstances shall ever be permitted to justify the assumption of a power not given by the Constitution, the General Government will before long absorb all the powers of legislation, and you will have in effect but one consolidated government. . . . ; and every friend of our free institutions should be always prepared to maintain unshaken and in full vigor the rights and sovereignty of the States and to confine the action of the General Government strictly to the sphere of its appropriate duties."

In the *Jones & Laughlin* case, *supra*, this Court stated, "The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself estab-

States, however numerous among the several states and the several members of the Court. That distinction between what is national and what is local in the subject-matter of the case is the maintenance of the Federal system.

Petitioner is of the opinion that if the line between Federal and State power is to be drawn correctly it must be drawn here. If that line is not drawn here it cannot but fall low in every instance. Petitioner does not profess to be saying what laws does not deal in good faith with the Federal Government, does not will themselves to be subject to Federal regulation in interstate commerce, and does not wish to show the power of the Federal Government in order to effectively regulate interstate commerce. If Petitioner's business is subject to Federal regulation under the Commerce Clause, then it is subject to Federal regulation under the Commerce Clause, and the National Labor Relations Board and National Labor Relations Board, established by the Constitution, which has been repeatedly affirmed by the Court, e. g., *Frederick Insurance Co. v. National Insurance Commissioners*, 22 U. S. 405, 421, is meaningless.

Conclusion

For the reasons stated it is respectfully submitted that the decree of the Court below should be reversed and the petition for enforcement of the National Labor Relations Board should be dismissed.

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Counsel for Petitioner.

APPENDIX

The relevant provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. 141, Supp. IV, Secs. 151 et seq.) are as follows:

"Definitions.

"Sec. 2. When used in this Act—

"(6) The term 'commerce' means trade traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory or between points in the same State but through any other State or any Territory or the District of Columbia, or any foreign country.

"(7) The term 'affecting commerce' means to commerce, or burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 703

**HOWELL CHEVBOLET COMPANY, A CORPORATION,
PETITIONER**

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH
CIRCUIT**

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Acting Solicitor General files this memorandum on behalf of the National Labor Relations Board, and states that the Government does not oppose the granting of the writ of certiorari sought herein.

Although we believe the decision of the court below to be correct, the decision, insofar as it upholds the Board's jurisdiction over petitioner, is in conflict with the decision of the Court of Appeals

for the Sixth Circuit in the consolidated cases of *National Labor Relations Board v. Bill Daniels, Inc., and Walker Motors, Inc.* and *National Labor Relations Board v. Gilbert Motor Sales, Inc.*, not yet reported, decided January 20, 1953, rehearing denied, March 17, 1953. Because of the conflict and the importance of the question in the administration of the National Labor Relations Act, the Government intends to petition for a writ of certiorari to review the decision of the Court of Appeals for the Sixth Circuit in the above-mentioned cases.

It would in our view be appropriate for this Court in resolving the conflict to review both the instant decision and the cited decision of the Court of Appeals for the Sixth Circuit. For this reason we do not oppose the granting of a writ of certiorari.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General.

GEORGE J. BOTT,
General Counsel,
National Labor Relations Board.

MAY, 1953.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 34

HOWELL CHEVROLET COMPANY, A CORPORATION,
PETITIONER

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion and dissenting opinion in the court below (R. 334-351) are reported at 204 F. 2d 72. The findings of fact, conclusions of law, and order of the Board (R. 12-70) are reported at 95 NLRB 410.

FOUNDERSHIP

The decree of the court below (R. 352-357) was entered on February 26, 1953. The petition for a writ of certiorari, filed on April 8, 1953, was granted on May 18, 1953 (R. 359). The juris-

diction of this Court is invoked under 28 U. S. C. 1254 (1) and Section 10 (a) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Petitioner is a California automobile dealer operating under an agreement with the Chevrolet Motor Division, General Motors Corporation, which requires that it handle to the latter's satisfaction the sale and servicing of Chevrolet motor vehicles and parts. During 1949, petitioner purchased from the Chevrolet assembly plant in California almost \$1,000,000 worth of new vehicles, for which about 43 percent of the production parts had been manufactured and shipped to California from points outside the State. During the same period, petitioner purchased from Chevrolet's California warehouse \$129,145 worth of parts and accessories, 43 percent of which had been shipped from outside of California. The question presented is whether petitioner's operations affect commerce within the meaning of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151 et seq.), are set forth in Appendix A, *infra*, p. 37.

STATEMENT

Following the usual proceedings under Section 10 of the National Labor Relations Act, as amended, the Board, on July 23, 1951, issued its decision holding that petitioner had violated Section 8 (a) (1), (3), and (5) of the Act and ordered that these unfair labor practices be remedied. No question is presented here as to the propriety of the Board's findings and conclusions regarding the substantive violations of the Act. The sole issue before this Court is whether, as the court below held, petitioner is subject to the Board's jurisdiction. The facts with respect to petitioner's business operations, which alone are pertinent here, may be summarized as follows:

I

The Board's findings of fact

A. Petitioner's purchases and sales

Petitioner is a California corporation engaged at Glendale, California, in selling and servicing new and used motor vehicles, chassis, parts and accessories under a "Direct Dealer Selling Agreement" with the Chevrolet Motor Division, General Motors Corporation, hereinafter referred to as Chevrolet (R. 15-16, 55-56, 75-88).

During 1949, petitioner purchased for resale \$960,797.97 worth of new Chevrolet motor vehicles which were shipped to it from Chevrolet's new car and truck assembly plant at Van Nuys, California

(R. 16; 73). Of the production parts comprising these vehicles, some 43 percent had been manufactured and shipped to California from points outside the state (R. 16-17; 94, 96, 99).

During the same year, petitioner purchased from Chevrolet parts and accessories valued at \$129,145.01.¹ These were shipped to petitioner from Chevrolet warehouses in Van Nuys, California, to which they had been shipped from all over the United States, 43 percent coming from outside of California (R. 16; 72, 87.)²

Petitioner's sales of new cars and trucks for 1949 amounted to \$1,246,812.85, and its sales of parts and accessories amounted to \$256,850.62. All of these sales were made within California. (R. 16-17; 72.)

B. Petitioner's status as an authorized Chevrolet dealer

The "Direct Dealer Selling Agreement," under which petitioner conducts its business operations, requires petitioner "to properly develop to the satisfaction of [Chevrolet] the sale of Chevrolet motor vehicles and chassis," to devote its full time and attention to the conduct of the business, and to "[m]ake every reasonable effort to satisfy

¹ In addition, during 1949, petitioner purchased from other sources within the State \$37,240.35 worth of parts and accessories (R. 16; 72).

² During the fiscal year October 1, 1949, through September 30, 1950, petitioner purchased from Chevrolet motor vehicles, service parts and accessories valued at between \$1,500,000 and \$2,000,000 (R. 16-17; 94, 96-97).

owners of Chevrolet motor vehicles and chassis" within its designated sales territory (R. 76, App. B, *infra*, pp. 45, 48, 52).¹ Accordingly, the agreement governs all of petitioner's "transactions, dealings and relations" with Chevrolet, and further regulates petitioner's relationships with other authorized Chevrolet dealers and the public (R. 76, App. B, *infra*, p. 56 ff.). The agreement is for a period of one year but is terminable prior thereto upon notice in the event that either party fails to comply with any of its terms. In addition, Chevrolet is authorized to terminate the agreement in the event of a change in the ownership of the dealer, disputes among its owners or officers that may adversely affect the business, insolvency or bankruptcy, and conviction of any of the dealer's principal officers or managers of any crime which may adversely affect the business (R. 76, App. B, *infra*, pp. 58-60).

1. *Petitioner's relationship to Chevrolet*

Upon the terms and conditions set forth in the "Direct Dealer Selling Agreement," petitioner is given (1) the privilege of purchasing Chevrolet motor vehicles, chassis, parts and accessories from Chevrolet, at prices established by Chevrolet,

¹ A detailed set of "Terms and Conditions" incorporated in the Selling Agreement is reproduced in large part as Appendix B of this brief, pp. 58-60, *infra*. This material, introduced as General Counsel's Exhibit 5-C, is part of the record before this Court but has been only partially printed (R. 82-88).

(2) the power to act as an authorized Chevrolet dealer, exercising the "non-exclusive privilege" of selling new Chevrolet motor vehicles, chassis, parts and accessories, and (3) "the privilege of using the word 'Chevrolet' and the Chevrolet trademark" (R. 82).^{*}

"In order to permit [Chevrolet] to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales," petitioner is required to furnish Chevrolet every ten days with a "Ten-Day Report," on forms supplied by Chevrolet, showing its sales of cars, stocks of cars, and unfilled orders on hand at the end of the period (App. B, *infra*, p. 39). Petitioner must also "furnish [Chevrolet] for its general guidance every month," on a date specified by Chevrolet, an estimate of its "requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately." Orders for Chevrolet motor vehicles and chassis must be submitted on forms supplied by Chevrolet, at mutually satisfactory intervals. Orders may be cancelled by petitioner or by Chevrolet, upon written notice, if Chevrolet fails to ship products scheduled for delivery during the month, except

^{*} In connection with the retail sale of Chevrolet products, petitioner, like other authorized dealers, utilizes the credit services and facilities of the General Motors Acceptance Corporation (R. 95, 98).

orders for special motor vehicles and chassis, which may be cancelled only by Chevrolet. (R. 83, App. B, *infra*, pp. 38-39.)

Other aspects of petitioner's business, in addition to purchases, orders, and estimates, are also subject to extensive control by Chevrolet under the terms and conditions of the selling agreement. Petitioner must maintain its place of business, including salesroom, service station, parts and accessories facilities, and used car facilities, at a location and in a manner satisfactory to Chevrolet. The amount and structure of its working capital must be adequate in the opinion of Chevrolet. Petitioner is required to purchase such special tools developed by Chevrolet as Chevrolet shall deem necessary to render proper service to customers; to carry in stock at all times an adequate number and assortment of parts and accessories to render proper service to Chevrolet motor vehicle owners in petitioner's "zone of influence;" to install and maintain an accounting system "in strict accordance with the Accounting Manual prescribed by [Chevrolet]" and to submit complete financial and operating statements by the tenth day of each month; to purchase, erect and maintain at its own expense a standard Chevrolet electric sign, an authorized service sign, and such other signs as are necessary to advertise the business on a mutually satisfactory basis; and to permit Chevrolet to examine petitioner's accounts and records, to inspect and check over its

place of business, service facilities, and stock of parts and accessories at any reasonable time in business hours. (R. 83-84, 85, App. B, *infra*, pp. 45-46, 47, 50, 51, 52-53.)

In connection with any service work performed by petitioner for Chevrolet's account, including work for purchasers of vehicles under Chevrolet's service policy and manufacturer's warranty, the sales agreement requires petitioner to apply the "Chevrolet Flat Rate System of time allotments." Petitioner is required to install any parts furnished by Chevrolet under its warranty on motor vehicles sold by petitioner without expense to the owner of the vehicle. In return, Chevrolet agrees to reimburse petitioner, on the basis of the time allotments prescribed in the Flat Rate System, at one-half of the labor rates agreed to by Chevrolet, for service work recommended and furnished by Chevrolet, and for the cost of replacing defective parts under the warranty, if the replaced parts are returned to Chevrolet and found by it to be defective. (App. B, *infra*, pp. 51-52.)

For the purpose of giving "to Chevrolet dealers the advantage of a comprehensive and coordinated dealer advertising program," Chevrolet maintains and administers an "Advertising Fund." As required by the sales agreement, for each new Chevrolet motor vehicle and chassis it purchases, petitioner contributes \$12 to this fund, which is used to defray the cost of advertising in peti-

tioner's territory, "through such local advertising media as, in the judgment of [Chevrolet]," will benefit petitioner. Chevrolet also pays into the Advertising Fund the sum of \$3.75 for each new Chevrolet motor vehicle and chassis purchased by petitioner, and this portion of the fund may be used by Chevrolet "for advertising of such type in such media and at such time and place as, in the opinion of [Chevrolet], will most effectively serve the dealer needs or interests as determined by [Chevrolet]." (R. 85-86, 88, App. B, *infra*, pp. 54-56.)

2. *Petitioner's relationship with the public*

Further implementing petitioner's basic obligation to "properly develop to [Chevrolet's] satisfaction the sale of Chevrolet motor vehicles and chassis" within its sales territory, the "Direct Dealer's Selling Agreement" establishes standards governing petitioner's dealings with the public. Thus, the agreement recites that Chevrolet will prepare "Advertised Delivered Prices" on new Chevrolet motor vehicles and chassis, at Flint, Michigan, and that Chevrolet desires that "all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser." Petitioner is required to advertise its delivered

prices in its town; to inform retail purchasers of such prices; to give them itemized invoices covering the details of their purchases; to remove any optional equipment or accessories which the purchaser does not want, or, if necessary, to order a new vehicle without such optional equipment or accessories; and to refrain from making any statement intended to lead a purchaser to believe that transportation and handling charges are greater than those actually charged to and paid for by him. (App. B, *infra*, pp. 48-50.)

"Recognizing the importance of owner goodwill," petitioner is obligated to furnish "prompt and satisfactory service at reasonable cost to Chevrolet owners." (R. 84, App. B, *infra*, p. 50.) Specifically, it agrees to condition new motor vehicles and chassis before delivery, in accordance with Chevrolet's pre-delivery inspection schedule, to execute and deliver to each new Chevrolet vehicle purchaser an "Owner's Service Policy," on forms furnished by Chevrolet, and to perform promptly all the terms of the service policy; to carry in stock an adequate number and assortment of parts and accessories "to render proper service to owners of Chevrolet motor vehicles and chassis in [petitioner's] zone of influence"; to employ a sufficient number of mechanics to meet adequately "the service requirements of the Chevrolet owners in [petitioner's] zone of influence"; and to refrain from selling, offering

for sale, or using in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any parts which are not in fact genuine new Chevrolet repair parts (R. 84, App. B, *infra*, pp. 49-50). In general, petitioner is obligated to make "every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis in [its sales] territory * * * and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from [petitioner] and in pursuance thereof establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by [petitioner] which cannot readily be remedied, shall be promptly reported to [Chevrolet] with the name of the owner making same." (R. 84, App. B, *infra*, p. 52.)

3. *Petitioner's relationship to other dealers*

The Direct Dealer's Selling Agreement also governs some of petitioner's relationships with other dealers and associate dealers. Dealers' locations and sales territories are controlled, of course, by Chevrolet, which limits the number of dealers in any territory according to population (R. 79-80, App. B, *infra*, p. 46). No dealer may "participate in local advertising in a community outside his zone of influence" unless he obtains the written consent "of the dealer or dealers in whose zone of influence such community is lo-

cated" (R. 86). Petitioner's business hours, too, are limited by those of other dealers, since petitioner must "maintain the business hours customary in the trade" (R. 83).

In addition, petitioner obligates itself to perform services which benefit other dealers and the overall business of selling Chevrolet products. Under the sales agreement, petitioner must "render proper service to owners of Chevrolet motor vehicles and chassis in [petitioner's] zone of influence" without regard to the fact that such owners may have purchased their vehicles from another dealer. Petitioner engages, along with other authorized Chevrolet dealers, in a "comprehensive and coordinated dealer advertising program," and is required to participate jointly with other dealers in advertising where "two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of [Chevrolet] advertising in said large city covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of [Chevrolet], may be considered as a common area for purposes of local advertising." (R. 85, 86-87, App. B, *infra*, pp. 50, 55.)

Finally, petitioner, "with approval of and jointly with [Chevrolet]," must "enter into selling agreements with Associate Dealers for the sale of new Chevrolet motor vehicles, chassis, parts

and accessories under the jurisdiction of [petitioner] at such places within [petitioner's] territory as [petitioner] shall deem advisable or as [Chevrolet] may require." If petitioner fails to appoint Associate Dealers at the request of Chevrolet within three months after such a request, Chevrolet has the right to appoint Associate Dealers at the designated places. (App. B, *infra*, pp. 56-57.)

II

The Board's conclusions and order

The Board found that petitioner, operating under the sales agreement, and subject to controls imposed by Chevrolet, is "one of a limited number of dealers selling Chevrolet products, and, by virtue of its contractual relationship with Chevrolet Motor Division—General Motors Corporation, is an integral part of that corporation's national system of distribution" (R. 56-57). It concluded that, in the circumstances, petitioner was subject to the Act and that it would effectuate the policies of the Act to assert jurisdiction in the case (R. 57). The Board further found (R. 56-63) that petitioner had violated Section 8 (a) (1), (3), and (5) by engaging in various acts of restraint and coercion, discharging an employee for his union activities, and refusing to bargain with the employees' bargaining representative.

The Board ordered petitioner to cease and desist from the unfair labor practices found, to bar-

gain upon request with the respondent representative to offer such assistance. This was paid to the discharged employee and to both the respondent (R. 35-37).

III.

THE BOARD'S ORDER

On February 27, 1942, the Board issued an order finding that Board's order was an integral part of Chevrolet's interstate commerce and that its activities affected commerce within the meaning of the Act. Affirming the Board's findings of unfair labor practices, the court entered a decree enforcing the Board's order (R. 334-357.)

SUMMARY OF ARGUMENT

The Board's power, which is as broad as Congress could make it, extends in all circumstances, whether or not they are themselves engaged in interstate commerce, where a conspiracy due to unfair labor practices would tend to impede or obstruct such commerce. *Polish National Alliance v. National Labor Relations Board*, 322 U. S. 643; *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 675, 684. That power is clearly broad enough to reach petitioner which (1) purchases substantial quantities of goods originating outside of the state, (2) is an integral part, in terms of the relevant economic realities, of Chevrolet's interstate operations, and (3) receives large quantities of goods which continue to move in commerce until they reach petitioner.

8. 1. Petitioner purchases annually from Chevrolet over \$20,000 worth of vehicles and chassis and \$150,000 worth of parts and accessories. Some 42 percent of the parts from which Chevrolet assembles the vehicles come from outside the state. Similarly, 43 percent of the parts and accessories petitioner buys are brought into California by Chevrolet, manufactured there, and then shipped as to petitioner and other dealers. These facts, even apart from petitioner's close ties with the vast Chevrolet enterprise, sustain the Board's jurisdiction.

It is clear that a stoppage of petitioner's operations would obstruct the flow of goods Chevrolet brings to California for its dealers. And it is immaterial that the shipments from Chevrolet to petitioner are made within California. Where, as here, the effect on commerce is clear and substantial, it is within the power to regulate activity "affecting commerce," notwithstanding that the source of the injury, when viewed in isolation, is intrastate. *National Labor Relations Board v. Doctor Rite, General*, 241 U. S. 675; *National Labor Relations Board v. Faircliff*, 302 U. S. 501; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197.

Equally immaterial is the suggestion that other dealers would take over the halted sales and service normally handled by petitioner and that the loss to commerce, considering petitioner's enter-

prise alone, would be slight or nonexistent. *National Labor Relations Board v. Bradford Dyeing Assn.*, 310 U. S. 518, 526. Indeed, the very fact "that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce," argues decisively in favor of the Board's jurisdiction. *Polish National Alliance*, *supra*, at 647-648.

2. The case for the Board's jurisdiction becomes clear beyond doubt upon consideration of petitioner's relationship to Chevrolet. Serving, along with other dealers, as Chevrolet's "direct selling contact with the public," petitioner is tightly integrated with, and controlled by, Chevrolet. To place its huge purchases and shipments of interstate goods, Chevrolet requires frequent reports from its dealers on their present and anticipated needs. Recognizing that the end of all its nationwide activities is sales and service of its products, Chevrolet closely supervises its dealers to insure achievement of this end. Operating under this detailed control, petitioner is in economic fact, as the First Circuit (with which the court below agreed) has held, tied "into a vast national network of an integrated distribution system which affects commerce." *National Labor Relations Board v. Ken Rose Motors, Inc.*, 193 F. 2d 769, 771.

B. While it is unnecessary to sustain the deci-

also below, *Standard Oil Co. v. Federal Trade Commission*, 340 U. S. 231, makes it clear that at least the substantial quantity of parts and accessories petitioner purchases from Chevrolet move "in commerce" until they reach petitioner's establishment. Accordingly, there is no basis for the single argument—fallacious in any event— with which petitioner attacks the Board's jurisdiction.

The *Standard Oil* case held that sales by an "interstate producer * * * to a local distributor" were "in commerce" where, though the sales were made within a single state, it was shown that (1) the "customers' demands could be accurately estimated" and (2) the goods were brought into the state and stored by the interstate producer awaiting sale. Here, maintaining close supervision over its dealers, Chevrolet is of course in a position to gauge their needs. And, as in *Standard Oil*, it brings its products into the state in a steady flow, with the halt in its warehouses functioning only as "a convenient intermediate step in the process of getting them to their final destinations * * *." *Walling v. Jacksonville Paper Co.*, 317 U. S. 564, 568.

Since the parts and accessories remain "in commerce" until they reach petitioner, there is ample basis for the Board's jurisdiction even by the outworn test of "direct" effects on commerce which petitioner invokes.

STATEMENT

The Board's finding that petitioner's operations affect commerce within the meaning of the Act is valid.

Section 10 (a) of the Act empowers the Board to prevent unfair labor practices "affecting commerce." Section 2 (7) defines the term "affecting commerce" to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." It is settled that in this Act Congress "in order to protect interstate commerce from adverse effects of labor disputes has undertaken to regulate all conduct having such consequences that constitutionally it can regulate. . . . Congress . . . left it to the Board to ascertain whether prescribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress." *Polish National Alliance v. National Labor Relations Board*, 322 U. S. 643, 647-648. Accordingly, the Board's jurisdiction extends to any enterprise, including intrastate enterprises, where a stoppage of business operations resulting from industrial strife attributable to unfair labor practices would tend to impede or disrupt the free flow of goods in their normal channels of interstate commerce. *Ibid.*; *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1, 36; *National Labor Relations Board v. Painblatt*,

306 U. S. 301, 307; *Banks Ore Co. v. National Labor Relations Board*, 302 U. S. 453, 457; *National Labor Relations Board v. Bradford Dyeing Association*, 310 U. S. 313, 326; *National Labor Relations Board v. Doctor Ship Council*, 341 U. S. 575, 584; *Wendover Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 313, 324, 325; *United States v. Women's Sportsman Association*, 338 U. S. 403, 404.

Applying this familiar test, the court below and the Court of Appeals for the First Circuit (in *National Labor Relations Board v. Ken Rose Motors, Inc.*, 193 F. 2d 762, and *National Labor Relations Board v. Somerville Buick, Inc.*, 194 F. 2d 56) have held that dealers like petitioner fall within the Board's jurisdiction over unfair labor practices affecting commerce. We submit that this conclusion, though disputed by the Court of Appeals for the Sixth Circuit,¹ is clearly correct.

¹ *National Labor Relations Board v. Bill Dennis, Inc.*, 209 F. 2d 579, pending on the Board's petition for certiorari, No. 61, this Term. Except for this decision, the courts of appeals have uniformly sustained the Board's exercise of jurisdiction over automobile dealers. *National Labor Relations Board v. Henry Lewis, Inc.*, 115 F. 2d 106 (C. A. 1), certiorari denied, 319 U. S. 682; *Williams Motor Co. v. National Labor Relations Board*, 126 F. 2d 260 (C. A. 5); *National Labor Relations Board v. Townsend*, 135 F. 2d 373, 382 (C. A. 9), certiorari denied, 341 U. S. 902; *National Labor Relations Board v. Davis Motors, Inc.*, 193 F. 2d 782 (C. A. 10); *National Labor Relations Board v. Donover Motor Co.*, 193 F. 2d 779 (C. A. 10). While the dealers in most of these

For petitioner, while the vehicles and parts it purchases happen to be shipped to it from an assembly plant and warehouse within California where its business is located, is engaged in operations which obviously and substantially affect commerce. This would be so, as we show in the first portion of our argument, even if the products petitioner purchases were deemed to end their interstate journey before they reached petitioner. But the fact is, in addition, that at least as to the parts and accessories shipped to petitioner after a stopover in Chevrolet's California warehouse, the movement "in commerce" continues until its destined end at petitioner's premises.

cases have imported cars and parts "directly" from outside the state, this factor is, in our view (and the view adopted by the First and Ninth Circuits), no basis for distinguishing the cases. It is noteworthy that even the Sixth Circuit, which has adopted a contrary position in the *Bill Daniels* case, recognized, when dealing with the Federal Trade Commission Act, that the sale of automobiles by local dealers was subject to the federal commerce power. In *Ford Motor Company v. Federal Trade Commission*, 120 F. 2d 175, 183, certiorari denied, 314 U. S. 668, that court declared: "The sale on credit [cf. fn. 4, p. 8, *supra*] of [Ford's] cars by its local dealers, when separately considered, may be intrastate in character but when the activities of [Ford's] local agencies are weighed in the light of their relationship to [Ford], and its financing sales of cars, it is at once apparent that there is such a close and substantial relationship to interstate commerce that the control of such activities is appropriate to its protection."

A. Petitioner, as a purchaser of large quantities of goods originating outside the state and as an integral part of Chevrolet's multi-state operations, is engaged in operations "affecting commerce"

1. The record shows (see pp. 3-4, *supra*) that petitioner's annual purchases of vehicles and chassis from Chevrolet total over \$960,000, and its purchases of parts and accessories over \$129,000. While the vehicles are assembled at, and shipped from Chevrolet's assembly plant within California, some 43 percent of the parts of which they are composed come from outside the State. As to the parts and accessories shipped to petitioner from Chevrolet's California warehouse, 43 percent of these too come to the warehouse from other States.

If it were necessary to rely on these facts alone, without considering the intimate and substantially unitary relationship between petitioner and Chevrolet, we think they would be sufficient to sustain the Board's jurisdiction. It is clear that a stoppage in petitioner's operations "would * * * have a direct effect upon the interstate activities of [Chevrolet] whose production schedule is geared to the needs of [its] dealers. A stoppage of [petitioner's] business would necessarily affect the manufacturers' production—a cutback in production would in turn affect the interstate activities of those furnishing materials required for such production." *National Labor Relations*

Board v. Conover Motor Company, 192 F. 2d 779, 781 (C. A. 10). Even aside from the production parts which flow to California for assembly by Chevrolet and shipment to petitioner, there would be ample basis for the Board's power in the large quantity of parts and accessories which are merely warehoused by Chevrolet after arrival in California and then shipped on without assembly to petitioner and other dealers. For a cessation of petitioner's business would have an immediately discernible impact on the need for these parts and accessories—in goods, that is, destined solely, and without further fabrication, for petitioner and other dealers similarly situated. And a threat of obstruction to interstate shipments of such magnitude is plainly substantial enough to sustain the Board's jurisdiction. Cf. *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 675; *Carpenters Union v. National Labor Relations Board*, 341 U. S. 707.

The single premise on which petitioner attacks the Board's jurisdiction—that there is no movement in interstate commerce from Chevrolet to petitioner since the shipments to petitioner travel only from Chevrolet's California assembly plant and warehouses to petitioner's premises in California—would be unavailing even if it were correct. (See pp. 33-36, *infra*.)^{*} The Board's power,

^{*} It bears mention in passing, though it anticipates matters considered more fully below, that the prime fact on which petitioner relies—the fact that Chevrolet ships the vehicles

as broad as Congress could confer, reaches unfair labor practices which "affect" commerce. To sustain the exercise of such power it has long been unnecessary "to search for some sharp point or line where interstate commerce ends and intrastate commerce begins, in order to decide whether Congress' commands were effective. For . . . the exact location of this line made no difference" *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 219, 232. It is enough that the activity "exerts a substantial economic effect on interstate commerce, and this irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect.'" *Wickard v. Filburn*, 317 U. S. 111, 125.

The power Congress conferred on the Board "is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce." *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1, 36. And so it is settled that the Board has jurisdiction over "a privately owned public utility whose business and activities are carried on wholly within a single state" because a cessation

and parts from within California—is itself an apparently fortuitous and variable circumstance. For Chevrolet, integrating petitioner and other dealers into a coordinated national system of distribution, retains the right to ship to petitioner "from whatever point it [Chevrolet] may select" (App. B, *infra*, p. 40).

of such a utility's operations would impede or obstruct interstate activities. *Bus Employees v. Wisconsin Employment Relations Board*, 340 U. S. 383, 391; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197. Similarly, the Board may prevent unfair labor practices in manufacturing enterprises, whether or not the raw materials move to the factory across state lines, where the products are destined for sale in interstate commerce. *Santa Cruz Co. v. National Labor Relations Board*, 303 U. S. 453; cf. *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1. For it is clear in such cases that "the cessation of manufacture necessarily results in the cessation of the movement of the manufactured product in interstate commerce." *National Labor Relations Board v. Fairblatt*, 306 U. S. 601, 604.

The same kind of practical economic judgment is decisive against petitioner's argument here. It is of no consequence that the obstruction to commerce arises from an activity which follows, rather than precedes, the interstate movement of the products. Cf. *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 676 (jurisdiction upheld over electrical subcontractor on building project who had purchased \$225 worth of out-of-state materials for job involved, purchased some \$56,000 in out-of-state materials annually, and purchased intrastate \$20,000 in materials which had been produced in other

states); *Carpenters Union v. National Labor Relations Board*, 341 U. S. 707 (same as to unfair labor practices affecting installation in private dwelling of floor and wall coverings where employer involved purchased semi-annually some \$30,000 in goods shipped from other states, purchased intrastate a similar amount manufactured out of state, and made a small amount of interstate sales); *United States v. Sullivan*, 332 U. S. 689. What matters is that petitioner's "phase * * * of the total economic process" (*Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 219, 233) is the essential end and aim of a massive interstate movement which would be obstructed if petitioner's business were halted. For "it is the effect upon interstate or foreign commerce, not the source of the injury, which is the criterion." *Consolidated Edison Company v. National Labor Relations Board*, 305 U. S. 197, 222. See, also, *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1, 37; *United States v. Women's Sportswear Assn.*, 336 U. S. 460, 464; *Second Employers' Liability Cases*, 223 U. S. 1, 51.

* Indeed, an enterprise may be subject to the power to regulate activities affecting commerce though it involves the production of particular goods which have not been in, and are not destined for, interstate commerce. *United States v. Wrightwood Dairy Co.*, 315 U. S. 110; *Wickard v. Filburn*, 317 U. S. 111.

The controlling force of this principle in this case is not diminished by the suggestion (Pet. Br. 8) that "elimination of Petitioner from the market * * * would not affect the sales of the products of General Motors Corporation but would merely reduce the number of sellers of that product who are bidding for the available market." It is settled that where the effect of a labor dispute would be an obstruction to commerce, the existence of alternative enterprises which might take over the halted operations is no "bar to the Board's jurisdiction. *National Labor Relations Board v. Bradford Dyeing Assn.*, 310 U. S. 318, 326. Even though the effect on commerce in the single case, viewed in isolation, is slight—and though even this effect by itself might be dissipated over time by increased activity in completing enterprises—"the Board's jurisdiction can attach, as here, before actual industrial strife materializes to obstruct that commerce." *Ibid.* It is "[a]ppropriate for judgment * * * that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." *Polish National Alliance v. National Labor Relations Board*, 322 U. S. 643, 647-648; *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 675, 685, n. 14; see, also, *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 219, 236. Where

this is so, as it is in this case, there is no need to show (cf. Pet. Br. 9) "any specific effect upon interstate commerce * * *"; it is enough that the individual activity when multiplied into a general practice * * * contains a threat to the interstate economy that requires preventive regulation." *Mandeville, supra*, at 236.

2. There is substantially greater justification for the Board's assertion of jurisdiction over petitioner than there is in the ordinary case of a distinct and separate "individual activity" which may threaten commerce "when multiplied into a general practice * * *." By virtue of its sales agreement with Chevrolet, from which petitioner derives its entire business character and purpose for being, petitioner is in plain fact "an integral part" of a unitary enterprise which is heavily engaged in commerce. Cf. *Carpenters Union v. National Labor Relations Board*, 341 U. S. 707, 712.

* Petitioner's reliance (Br. 11) on *Federal Trade Commission v. Bunte Bros.*, 312 U. S. 349, is plainly misplaced. There, expressly contrasting the National Labor Relations Act as a statute in which "Congress has regulated activities which in isolation are merely local" (p. 351), the Court was concerned with the scope of the prohibition in the Federal Trade Commission Act against unfair practices "in commerce." Where, as in the Labor Act, Congress describes the power being exercised as extending to activities "affecting"—not merely those "in"—commerce, it "is not indulging stylistic preferences," but is announcing its decision to exert "the full sweep of its constitutional authority * * *." *Polish National Alliance, supra*, at 647.

As reflected in its very title, petitioner is a "Chevrolet" dealer. Together with other dealers of the same character, it serves as Chevrolet's virtually exclusive "direct selling contact with the public." To a very large extent, then, the goal of all the gigantic productive and distributive efforts comprising one of the Nation's greatest industries is realized only through sales and service operations in such establishments as petitioner's.

Recognising—indeed, playing a leading role in the creation of—these economic realities which petitioner's argument would ignore (*cf. National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1, 41), Chevrolet (General Motors) links petitioner and its other dealers tightly to itself and to the myriad streams of interstate commerce it generates. Petitioner is bound to, and subject to the control of, Chevrolet, not by "gossamer threads," but by "solid ties" (*Polish National Alliance, supra*, at 651) of self-interest, economic dependence, and contractual obligation.

In no way sharing petitioner's view that what happens in California is divorced from interstate commerce, Chevrolet requires a report every ten days on petitioner's sales, stocks, and orders "[i]n order to permit [Chevrolet] to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and

* Federal Trade Commission, *Report on Motor Vehicle Industry*, H. Doc. No. 468, 76th Cong., 1st Sess., p. 110 (1939).

chassis in line with retail sales * * *." (App. B, *infra*, p. 39.) To the same end, Chevrolet requires a monthly estimate of petitioner's needs for vehicles and chassis during each of the ensuing three months. Chevrolet determines the location and checks on the arrangement of petitioner's premises; checks on the amount and structure of petitioner's working capital; requires petitioner to purchase special tools and maintain specified stocks of parts and accessories. Petitioner must display standard Chevrolet signs, submit its accounts and premises to Chevrolet's inspection, and contribute to advertising funds largely administered by Chevrolet. The elaborate controls Chevrolet exercises over petitioner are spelled out in greater detail above, pp. 4-13. It suffices here to point the inescapable conclusion that the operations of petitioner and other dealers are economically inseparable from and essential to the vast interstate activities of Chevrolet.

In the face of the economic facts, the effort to defeat the Board's jurisdiction is scarcely advanced by the happenstance that petitioner is located within a state where Chevrolet maintains one of its many assembly plants and groups of warehouses.²² As we have noted (fn. 6, pp. 22-23,

²² Moody's *Manual of Investments (Industrials)* for 1953, p. 2512, reports for the Chevrolet Division of General Motors twenty manufacturing plants scattered over ten states, including two in California. The figures for 1950 were the same. *Id.* (1950), p. 2850.

supra), Chevrolet, viewing itself and its dealers as a highly integrated whole, reserves the right to ship its products to petitioner from any point dictated by its (Chevrolet's) economy and efficiency." But apart from this, and confining ourselves to the record of shipments to petitioner from Chevrolet within California, the critical fact remains that a substantial quantity of these goods merely flowed through Chevrolet's California establishment (some to be assembled into vehicles, others merely to be warehoused for transshipment) and on to petitioner. And this fact in fact, though in itself decisive, is only part of the picture of petitioner's role as an integral unit of a multistate enterprise.

Appraising the identical circumstances in *National Labor Relations Board v. Ken Ross Motors, Inc.*, 193 F. 2d 766, a decision on all fours with the decision below (with the immaterial difference that it involved a Ford rather than a Chevrolet dealer), the Court of Appeals for the First Circuit said (p. 771):

The * * * Sales Agreement ties the [dealer] into a vast national network of an integrated distribution system which affects commerce. The activities of Ford and [the dealer] are shaped to a pattern which is found throughout the nation.

* The record shows (R. 95, 97) that between \$750 and \$1,000 worth of Chevrolet products were shipped by Chevrolet to petitioner directly from outside of California during the period from October 1, 1949, to September 30, 1950. The Board placed no reliance on this factor and it seems unnecessary to invoke it here.

Because this is so, we think it clear that the Court of Appeals for the Sixth Circuit erred in disagreeing with the First and Ninth Circuits on the ground that "[i]n order to be an integral part of Ford [or Chevrolet] these dealers would have to be either employees or agents of Ford [or Chevrolet]." *National Labor Relations Board v. Bill Davis, Inc.*, 202 F. 2d 579, 585, pending on the Board's petition for certiorari, No. 81, this Term. As the court below observed in answer to this argument (R. 337), "the impact of automobile sales agreements of the kind here involved upon [the question whether the employer's activities bear a sufficient relation to commerce to sustain the Board's jurisdiction] is not dependent upon whether these agreements square with common law concepts of principal and agent, or employer and employee. Rather, * * * the important matter is, how does the arrangement work?" For "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift & Company v. United States*, 193 U. S. 375, 398; *Wickard v. Filburn*, 317 U. S. 111, 122.

Viewed in the practical economic terms which count here, petitioner is truly a part—and an essential part—of Chevrolet's interstate operations. It is clear, at the very least, that petitioner's enterprise is peculiarly suited for inclusion among those which, however modest their activities may seem in isolation, "contribute in the

aggregate a vast volume of interstate commerce." *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 607. See pp. 25-26, *supra*. Like all such businesses, petitioner's is subject to the Board's jurisdiction.

This conclusion is no basis, of course, for petitioner's fears that the Board's power is being extended to cover "not only the traditional butcher, baker and candlestick maker, but also the shoe repairman in his shop and the bootblack on the corner" (Pet. Br. 8). It may be noted that the Board has neither resources nor ambitions which should justify such alarm." *Cf. United States v. Sullivan*, 332 U. S. 689, 694.

"As this Court observed in *National Labor Relations Board v. Denver Bldg. Council*, 341 U. S. 675, 684, "Even when the effect of activities on interstate commerce is sufficient to enable the Board to take jurisdiction of a complaint, the Board sometimes properly declines to do so, stating that the policies of the Act would not be effectuated by its assertion of jurisdiction in that case." In this connection, the Board has announced a set of standards which guide its discretion in determining whether to assert its jurisdiction under the Act. *Id.*, at 685, n. 14. So, for example, where its jurisdiction over an enterprise rests upon purchases by the enterprise of out-of-state goods, the Board will not ordinarily exercise its power unless there is a "direct inflow" exceeding \$500,000 annually, an "indirect inflow" exceeding \$1,000,000 annually, or a combination of these. However, where other factors are present, the Board may assert its jurisdiction even though these minima are not met. And one such factor leading the Board to take jurisdiction is a finding that the particular establishment in question is "operating as an integral part of a multistate enterprise." N. L. R. B., *Sixteenth Annual Report* (Govt. Print. Off., 1952), pp. 15-16.

But the important point, after all, is that "what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases." *Santa Cruz Co. v. National Labor Relations Board*, 303 U. S. 453, 467. The jurisdictional question under the Act must be faced upon the particular facts of each case. *Ibid.* All that matters here is that upon the facts of this case the Board and the Court of Appeals were correct in finding that petitioner's unfair labor practices were clearly a threat to the commerce broadly protected by the Act.

B. The movement of parts and accessories from outside of California, through Chevrolet's California warehouses, and on to petitioner is in interstate commerce

We have assumed thus far that petitioner is correct in the single assertion upon which it stakes its claim for reversal—the assertion that the goods it purchases from Chevrolet have ended their interstate journey (at Chevrolet's California warehouses) before they reach petitioner. It would make no difference, in our view, if this assertion were correct. But it is clear, in any event, under this Court's decision in *Standard Oil Co. v. Federal Trade Commission*, 340 U. S. 231, that at least the substantial quantity of out-of-state parts and accessories petitioner purchases from Chevrolet continues to move in interstate commerce until it reaches petitioner.

The undisputed facts relevant here are that petitioner purchases annually about \$129,000 worth of parts and accessories from Chevrolet; that, although these are shipped to petitioner from Chevrolet's California warehouse, they originate from all over the United States, 43 percent—or over \$50,000 worth—coming from outside the State. *Supra*, p. 4.¹² It is evident that, with petitioner and similar dealers serving as Chevrolet's "direct selling contact with the public" (fn. 2, *supra*, p. 27), such parts and accessories flow into and through Chevrolet's California warehouses for the sole and precise purpose of supplying these dealers in their sales and service operations. It seems clear in these circumstances that "the halt in the movement of the goods is a convenient intermediate step in the process of getting them to their final destinations," and that "they remain 'in commerce' until they reach those points." *Walling v. Jacksonville Paper Co.*, 317 U. S. 564, 568.

The *Jacksonville Paper* case indicated "that a wholesaler's course of business based on anticipation of needs of specific customers * * * might * * * at times be sufficient to establish that practical continuity in transit necessary to keep

¹² The sales agreement provides for sale of parts and accessories by Chevrolet to petitioner either "direct or through a designated parts warehouse * * *." App. B, *infra*, p. 42. Under stated circumstances, petitioner may return such items for credit by shipping them "to the destination specified by [Chevrolet]." *Id.*, pp. 44, 45.

a movement of goods 'in commerce' * * *." *Id.* at 570. Further, the Court there held that goods ordered by a retailer pursuant to a "contract or understanding" from a wholesaler in the same state remained "in commerce" throughout their journey from outside the state through the wholesaler's warehouse to the retailer. *Id.* at 569. We think that decision standing alone might well sustain our position here. See, also, *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52; *Binderup v. Pathe Exchange*, 263 U. S. 291.

But any doubt on this point is dispelled by the more recent decision in *Standard Oil Co. v. Federal Trade Commission*, 340 U. S. 231, 237-238. In that case Standard brought out-of-state gasoline to its terminal at River Rouge, Michigan, where it was stored for varying periods and then sold pursuant to individual orders to independent customers in Detroit. 340 U. S. at 236, 237. "Although the gasoline was not brought to River Rouge pursuant to orders already taken, the demands of the Michigan territory were fairly constant, and [Standard's] customers' demands could be accurately estimated, so the flow of the stream of commerce kept surging from [Standard's out-of-state refining plant] to Detroit." 173 F. 2d at 213-214." 340 U. S. at 237. The Court concluded that the sales by Standard to its customers were "in commerce" notwithstanding the "temporary storage of the gasoline * * *

within the Detroit area," expressly noting that the sales were "those of an interstate producer and refiner to a local distributor." 340 U. S. at 238, n. 6.

That ruling applies squarely to the sales here "of an interstate producer [Chevrolet] * * * to a local distributor [petitioner]." Accordingly, the very starting point for petitioner's argument disappears. Cessation of petitioner's operations, which would so clearly affect commerce in any case, would most assuredly affect that stream of commerce which flows to the very doors of petitioner's establishment.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be affirmed.

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JOHN E. JAY,

Attorney,

National Labor Relations Board,

NOVEMBER, 1953.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*), are as follows:

Sec. 2. When used in this Act—

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country, any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.

APPENDIX B

CHEVROLET MOTOR DIVISION

GENERAL MOTORS CORPORATION

Terms and conditions

DEALER DEALER

The following Terms and Conditions have by reference been incorporated in and made a part of the Selling Agreement which shall apply to and govern all transactions, dealings and relations between the parties:

SELLING RIGHTS, TERMS AND CONDITIONS OF SALE

1. DEALER'S SELLING PRIVILEGE

While this Agreement shall be and remain in effect, Dealer shall have the non-exclusive privilege of selling new Chevrolet motor vehicles and chassis and the privilege of using the word "Chevrolet" and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to Chevrolet motor vehicles and chassis, parts and accessories.

2. HANDLING OF DEALER'S ORDERS

A. Three months' estimate of requirements

Dealer will, unless otherwise advised by Seller, furnish Seller for its general guidance every month, on the date specified by Seller, but not later than the sixth day of each month, an esti-

mate, on forms provided by Seller, of his requirements of new Chevrolet motor vehicles and chassis for the three (3) calendar months next following, each month's estimate to be shown separately.

B. Ten day report

In order to permit Seller to keep its purchases of raw materials and the production and distribution of Chevrolet motor vehicles and chassis in line with retail sales, Dealer will furnish Seller, every ten (10) days, with a report known as the "Ten-Day Report" on standard forms supplied by Seller. Such report shall show retail sales of both new and used cars made during said period, new and used car stocks, and unfilled orders on hand at the end of said period.

C. Orders

Dealer's orders for Chevrolet motor vehicles and chassis shall be submitted upon order forms supplied by Seller, at intervals mutually satisfactory. If, however, in any month Seller does not ship the standard products which were scheduled for delivery during that month, the orders for such undelivered standard products will remain in effect unless cancelled in whole or in part by either Seller or Dealer upon written notice served by the one upon the other.

However, orders for special motor vehicles and chassis may be cancelled only by Seller.

Any motor vehicle or chassis which differs in any way from the standard specifications therefor as adopted by Seller or special equipment of any type shall be considered "special".

D. Failure to fill orders

Seller shall not be liable for failure or delay in filling orders of Dealer where such failure or delay is due, in whole or in part, to any cause beyond Seller's control or to any material, labor or utility shortage or curtailment or to any labor trouble in the plants of Seller or its suppliers or where delivery is prohibited, prevented or delayed by reason of any governmental or judicial action or proceeding, whether or not arising out of Seller's fault, and Dealer hereby releases and discharges Seller from any and all liability for any and all damages and losses arising from the failure of Seller to fill any orders placed hereunder.

3. PAYMENT BY DEALER

Dealer shall pay Seller for each shipment of new Chevrolet motor vehicles and chassis, Dealer's price from Seller in effect at the time of such shipment, together with a Factory Handling Charge determined by Seller which shall include reimbursement to Seller for any tax which it has paid, incurred or agreed to pay on any such motor vehicles or chassis, on the following terms: cash, sight draft, or sight draft with bill of lading attached payable with collection charges. Dealer shall pay interest on all drafts in the amounts and from the dates specified therein.

4. CAR SHIPMENTS

A. Mode of shipment

Seller has the right to ship all motor vehicles and chassis purchased by Dealer hereunder by

whatever mode of transportation and from whatever point it may select. * * *

5. CHANGE IN PRICING

A. Seller's rights

Seller has the right at any time to change prices, discounts, terms and provisions affecting any of its current models or body types of motor vehicles or chassis, and to issue new Price Lists with respect thereto.

If Seller changes prices, discounts, terms and provisions, such changed prices, discounts, terms and provisions shall apply to all motor vehicles and chassis ordered by Dealer and unshipped by Seller at the time that the same are made effective by Seller.

B. Price increases

Seller shall give written notice to Dealer of any change increasing the price to be paid by Dealer before shipping any motor vehicle or chassis to which such change is applicable. Upon receipt of such notice, Dealer may cancel orders or parts thereof for motor vehicles or chassis to which such change applies, provided written notice of election to cancel is delivered to Seller within ten (10) days after receipt by Dealer or Seller's notice. Failure to so elect within the time specified will constitute a confirmation of all unshipped orders for delivery in accordance with said change.

7. MODEL CHANGE AT REDUCED LIST PRICE

If, at the time new models or body types are announced, the list prices of such new models or body types are reduced from the list prices of the same model or body type of the discontinued series, Seller will refund or credit to Dealer a proportionate amount on the price paid by Dealer for those new unused motor vehicles and chassis of the discontinued series which are in Dealer's stock unsold at the time such new models and body types are announced, provided, however, that such refunds will not be paid in the case of such radical changes in size, design and price as to make such new models and body types, for all practical purposes, a new and different line of motor vehicles. In the latter event Seller will make such refunds or allowances as shall, in its opinion, seem equitable under the circumstances.

8. CHANGE OF DESIGN

Seller has the right to change the design of any new Chevrolet motor vehicle, chassis, accessories or parts thereof at any time, without notice to Dealer. If Seller shall make a change in design, there shall be no obligation upon Seller to make such change upon any Chevrolet motor vehicles, chassis, accessories, parts or other products manufactured or sold or being manufactured or sold in accordance with orders of Dealer; nor shall Seller be obligated to make a similar or corresponding change or substitution on any Chevro-

let motor vehicle, chassis, accessory or other part or product purchased by or shipped to Dealer.

10. PARTS AND ACCESSORIES

A. Selling rights

Seller hereby grants to Dealer the non-exclusive right to sell new genuine Chevrolet parts and accessories and Seller will sell Dealer direct or through a designated parts warehouse, such new genuine Chevrolet repair parts and accessories.

"Genuine Chevrolet parts" as used in this Agreement are defined as being parts manufactured by or for Seller, designed for use on Chevrolet motor vehicles or chassis, and distributed by Seller or any division or subsidiary of General Motors Corporation.

B. Prices

Sale of parts and accessories to Dealer will be made according to the prices, terms and provisions specified in the current Dealer Price List issued by Seller or according to such different prices, terms and provisions as may hereafter from time to time be established by Seller.

C. Billing and payment

Parts and accessories ordered by Dealer as aforesaid, will be invoiced to Dealer by Seller, and settlement therefor made by Dealer with Seller except in the case of dealers having current Selling Agreements covering two or more of the following makes of motor vehicles: Chevrolet, Pontiac and Oldsmobile. In the latter event

the divisions of General Motors Corporation with which Dealer has such Selling Agreements will agree among themselves on which one of them will carry such Dealer's account, and thereupon all parts and accessories ordered by such Dealer will be invoiced for the account of such division and Dealer will make settlement of such invoices with the division for whose account same are rendered.

Parts and accessories ordered by Dealer hereunder will be billed net cash payable the tenth of the month following date of billing, collection charges, if any, to be paid by Dealer.

D. Return of defective parts and accessories

After receiving specific authorization from Seller, Dealer may return defective Chevrolet parts and accessories to Seller for credit at Dealer's net prices in effect at date such parts and accessories are received by Seller, such parts and accessories to be shipped, transportation charges prepaid, to the destination specified by Seller. Dealer will be reimbursed for transportation charges prepaid by him on authorized shipments of defective parts and accessories made hereunder.

E. Return of inactive items

In the event Dealer develops an inactive stock of genuine Chevrolet parts, or for any other reason desires to liquidate a portion of his parts stock, Dealer may submit to Seller a list of those parts, in good condition and unused, which he desires to return for credit. Seller shall, as promptly as possible, notify Dealer as to the

parts, if any, on said list which Seller will accept and the price at which same will be accepted. Thereupon Dealer may ship to the destination specified by Seller, transportation charges prepaid, the parts which Seller has agreed to accept.

F. Right to return parts and accessories within thirty days

Dealer may return any new Chevrolet parts and accessories purchased hereunder, which are in good condition and unused, for credit within thirty (30) days after receipt thereof by Dealer, such parts and accessories to be shipped to the destination specified by Seller, transportation charges prepaid. Credit on new Chevrolet parts and accessories will be at Dealer's net prices. With respect to accessories, Dealer shall be entitled to return same whether same were purchased separately or shipped on or with a new Chevrolet motor vehicle. Under the same conditions, Dealer may return anti-freeze, polishes, chemicals and other similar items purchased hereunder for credit at Dealer's net prices.

Dealer, however, will not be entitled to return materials which are acquired or fabricated specially by Seller upon Dealer's order for a particular service order or car, including unlisted parts or assemblies and any cut or fabricated upholstery or trim items.

OPERATING REQUIREMENTS

11. DEALER'S PERSONAL SERVICES

Each person named in Paragraph Third of this Agreement shall devote his full time, attention,

and energy to the conduct of Dealer's business hereunder.

12. DEALER'S PLACE OF BUSINESS SATISFACTORY TO SELLER

Dealer will maintain a place of business including salesroom, service station, parts and accessories facilities, and used car facilities satisfactory to Seller and will maintain the business hours customary in the trade. Dealer will permit Seller to inspect said place of business at all reasonable times in business hours.

Dealer will not move to or establish a new location, branch sales office, branch service station or place of business including any used car lot or location without the prior written consent of Seller.

13. BUILDING SERVICE FOR DEALER

Seller will, upon request, but without liability to Dealer with respect thereto, furnish to Dealer a suggested building plan and layout, but such plan and layout will not be intended for use as a complete working plan and will be furnished solely as a suggestion.

14. CAPITAL REQUIREMENTS

Since the amount and structure of working capital and net worth required to handle properly the business to be conducted by Dealer hereunder depends upon many factors, including size of market, sales and service facilities required, anticipated volume and others and since Seller has set

standards for Dealer capital and net worth based on Seller's past experience. Dealer shall establish his owned net working capital and net worth in the respective amount and form specified by Seller. If the amount of owned net working capital or net worth or the way in which either is set up is now or hereafter inadequate in Seller's estimation for the proper handling of Dealer's business, Dealer will take the necessary steps to meet Seller's applicable requirements within the time determined by Seller.

16. ACCOUNTS AND RECORDS

A. Uniform accounting system

It is to the mutual interests of Seller and Dealer that uniform accounting systems and practices be maintained by dealers in order that Seller may develop standards of operating performance which will enable Dealers to obtain the most satisfactory results from the sales potentials existing to them and which will enable Seller to prepare accurate dealer profit statements periodically to guide Seller in formulating policies beneficial to the dealers' interests.

Accordingly, Dealer will use and keep up to date at all times a satisfactory uniform accounting system designated by Seller and will furnish to Seller, by the tenth of each month, a complete and accurate financial and operating statement with supporting data covering the preceding month's operations, showing the true and actual condition of Dealer's business. Dealer will maintain said system in strict accordance with the Accounting Manual prescribed by Seller.

B. Examination of accounts and records

In order to assure the maintenance of a uniform accounting system and practices, Dealer will permit an examination of his accounts and records to be made by a person or persons, either in the employ of Seller or acceptable to Seller, at such time or times as Seller may designate. A copy of the report of such examination will be furnished to both Seller and Dealer.

16. SATISFACTORY SALE OF MOTOR VEHICLES

Dealer shall properly develop to Seller's satisfaction the sale of Chevrolet motor vehicles and chassis in the territory described in Paragraph First.

17. SALES STAFF

Dealer shall maintain a staff of salesmen and a selling and customer relations organization adequate to take care of the sales potential of the territory described in Paragraph First.

18. SALES AND SERVICE RECORDS

In furtherance of the purposes, objectives, and obligations provided for in this Agreement, Dealer will keep complete and up-to-date records regarding the sale and servicing of new Chevrolet motor vehicles and chassis and will permit Seller at all reasonable times in business hours to inspect such records.

19. CUSTOMER COMPLAINTS

Dealer will receive, investigate and handle all complaints received from customers or prospective

customers with a view to protecting the goodwill of Seller and Dealer in the sale of Chevrolet products.

20. SUGGESTED PRICE TO RETAIL PURCHASER

A. Maximum price

Seller will prepare Advertised Delivered Prices on new Chevrolet motor vehicles and chassis at Flint, Michigan, and it is the desire of Seller that all retail customers wherever located be able to purchase such vehicles at not more than these prices, plus transportation charges and the retail installed prices of any optional equipment and accessories selected by the retail purchaser, all as shown in the current sheet of Suggested Maximum Retail Delivered Prices issued to Dealer by Seller from time to time, plus applicable taxes, if any.

Dealer will advertise his delivered prices in his town and will inform retail purchasers of such prices, and will give them itemized invoices covering the details of their purchases.

B. Right of retail purchaser to buy a new car without purchasing optional equipment or accessories

Dealer recognizes that a retail customer has the right to purchase new Chevrolet motor vehicles without being required to purchase any optional equipment or accessories and Dealer therefore will either remove any optional equipment or accessories which the purchaser does not want, or will immediately order a new Chevrolet

motor vehicle without such optional equipment or accessories.

C. Representation as to transportation charges

Dealer shall not make any statement intended to lead any purchaser to believe that a greater portion of the selling price of a new Chevrolet motor vehicle or chassis represents transportation charges and Factory Handling Charges than the amounts of such items actually charged to and paid for by Dealer.

II. CARE OF OWNER

Recognizing the importance of owner goodwill, dealer will furnish prompt and satisfactory service at reasonable cost to Chevrolet owners. In furtherance thereof Dealer will:

A. Conditioning of new motor vehicles

Condition each new motor vehicle and chassis before delivery, in accordance with Seller's pre-delivery inspection schedule.

B. Owner's service policy

Execute and deliver to each person who purchases a new Chevrolet motor vehicle or chassis from Dealer, an "Owner's Service Policy," on forms furnished by Seller as amended from time to time. Dealer will promptly perform and fulfill all the terms and conditions of said Policy.

C. Stock of parts

Carry in stock at all times during the life of this Agreement an adequate number and

assortment of parts and accessories to render proper service to owners of Chevrolet motor vehicles and chassis in Dealer's zone of influence.

D. Representation as to parts

Not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis as genuine new Chevrolet repair parts, any part or parts which are not in fact genuine new Chevrolet repair parts as defined in sub-paragraph A of Paragraph 12 hereof.

E. Special tools

Buy such special tools developed by Seller, as Seller shall deem necessary for Dealer to render proper service to owners. Further, Dealer authorizes and directs Seller to ship or cause to be shipped to Dealer in advance of delivery of new models, such special tools, the cost of which shall not exceed One Hundred Dollars (\$100.00), as Seller deems essential to service such new models properly. Dealer will pay for such new model tools promptly on receipt thereof.

F. Mechanical staff

Employ a sufficient number of competent mechanics to meet adequately the service requirements of the Chevrolet owners in Dealer's zone of influence.

G. Flat rate system

Install the Chevrolet Flat Rate System of time allotments for service work as recommended and furnished by Seller and charge Seller for policy, warranty, and any other work performed by Dealer for

Seller's account on the basis of such time allotments and at one-half ($\frac{1}{2}$) of the labor rates related thereto, as agreed upon with Seller.

H. Warranty adjustment

Install any part or parts furnished by Seller under the warranty set forth in Paragraph 9 hereof on motor vehicles sold by Dealer without expense to the owner of such vehicles and Seller will, if the replaced part is returned to and found by Seller to be defective, pay or credit to Dealer one-half ($\frac{1}{2}$) of the flat rate charge for installing the new part or parts according to the Flat Rate System of time allotments and labor charges then in effect in Dealer's business as provided in sub-paragraph G above.

I. Customer relationship

Make every reasonable effort to satisfy owners of Chevrolet motor vehicles and chassis in the territory described in Paragraph First hereof, and to satisfy all persons purchasing Chevrolet motor vehicles and chassis from Dealer, and in pursuance thereof establish regular contact either by correspondence or personal interview, with such owners or purchasers. All complaints received by Dealer which cannot be readily remedied, shall be promptly reported to Seller with the name of the owner making same.

J. Inspection of facilities

Permit Seller to inspect and check over Dealer's service facilities and stock of parts and accessories at any reasonable time in business hours.

22. SIGNS

Dealer will purchase, erect, and maintain at his expense the following signs as hereinafter specified:

A. A standard product electric sign in a conspicuous place outside his showrooms provided the erection thereof is not prohibited by municipal ordinance or statute.

B. A standard authorized service sign in a suitable location on the outside of Dealer's place of business.

C. Such other signs as are necessary to advertise his business properly on a basis mutually satisfactory to both Seller and Dealer.

23. CHEVROLET NAME AND TRADE-MARKS

A. Seller's exclusive rights

Seller is entitled to the use of the word "Chevrolet", and the Chevrolet trade-mark or trade-marks, including the distinctive outline or form thereof, as applied to motor vehicles and chassis, parts and accessories, and of the goodwill attached thereto.

B. Discontinuance of use upon termination

If the word "Chevrolet" is used in the name under which Dealer's business is conducted or the word "Chevrolet" or any Chevrolet trade-mark including the distinctive outline or form thereof, is used in any sign or advertising displayed by Dealer, Dealer will, upon termination of this Agreement, or upon the request of Seller, discontinue the use of the same. Thereafter Dealer will not use, either directly or indirectly, in connec-

tion with any motor vehicle business, any Chevrolet trade-mark, including the distinctive outline or form thereof, the word "Chevrolet" or any other name, title, expression or mark so nearly resembling the same as to be likely to lead to confusion or uncertainty or to deceive the public. If Dealer is a corporation in whose corporate name the word "Chevrolet" is used, Dealer will promptly have the corporate name changed, eliminating said word "Chevrolet" therefrom.

24. ADVERTISING FUND

In order to give to Chevrolet dealers the advantage of a comprehensive and coordinated dealer advertising program, an Advertising Fund, composed of a dealer portion and a factory portion, has been established and is administered by Seller for the purpose of supporting such a program.

A. Dealer portion of fund

Seller will collect the sum of Twelve Dollars (\$12.00) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the dealer portion of the Advertising Fund for the account of Dealer.

The amounts contributed by Dealer shall be used solely in paying the cost of local advertising, including preparation expense, in Dealer's territory, through such local advertising media as, in the judgment of Seller, will benefit Dealer. If a dealer desires to participate in local advertising in a community outside his zone of influence, he may do so provided that he shall have secured the consent in writing of the dealer or dealers in

whose zone of influence such community is located, and shall have reached an agreement in writing as to the amount per car which is to be taken out of his contributions to the Advertising Fund and applied to such advertising. A copy of said consent and agreement shall be furnished to Seller.

All local advertising to be paid for out of the dealer portion of the Advertising Fund shall carry the name and address of Dealer except that if, in the judgment of Seller, that is impractical, a suitable group reference will be used.

Contributions to said Fund shall be accounted for separately. However, contributions to the Fund shall be credited to the Fund for the joint account of all dealers involved where two or more Chevrolet dealers are located in the same city or town or where one or more dealers are located in a community suburban to a large city and in the judgment of Seller advertising in said large city substantially covers such suburban community, or where two or more dealers are located within a group of communities which, in the judgment of Seller, may be considered as a common area for purposes of local advertising; contributions by all other dealers shall be credited to the Fund for the separate account of each dealer involved.

With respect to contributions of dealers located in cities, towns, or communities as aforesaid, which are credited to the Fund for the joint account of the dealers involved, the unspent portion, if any, of any such dealer's contribution, upon termination of this Agreement, shall remain in said joint account and shall be used in the pay-

ment of the cost of local advertising and not refunded to Dealer. With respect to contributions of all other dealers which are credited to the Fund for the separate account of each such dealer, the unspent portion, if any, of any such dealer's contribution, upon termination of such dealer's Selling Agreement, shall be refunded to such dealer.

As soon as practicable after the close of each calendar year during the term of this Agreement, or in the event of termination of this Agreement, as soon as practicable after the effective date of termination, Dealer shall be furnished with a statement of his account in dealer portion of said Fund or of the joint account to which he has contributed. Such statement shall show the total advertising expenditures by media classification charged against said account, the total collections and the resulting balance, and in the case of a joint account, the amount of the individual contribution of Dealer.

B. Factory portion of fund

Seller will pay into the advertising Fund the sum of Three Dollars and Seventy-five Cents (\$3.75) for each new Chevrolet motor vehicle and chassis purchased and paid for by Dealer, and such sums will be credited to the factory portion of the Advertising Fund.

The factory portion of the Fund may be used by Seller for advertising of such type in such media and at such time and place as, in the opinion of Seller, will most effectively serve the dealer needs or interests as determined by Seller.

A. Appointment and termination

Dealer, with approval of and jointly with Seller, will enter into selling agreements with Associate Dealers for the sale of new Chevrolet motor vehicles, chassis, parts and accessories under the jurisdiction of Dealer at such places within the Dealer's territory as Dealer shall deem advisable or as Seller may require. All such agreements will be executed by Dealer and Seller on agreement forms to be supplied by Seller. The approval by Seller of the appointment of the Associate Dealer shall be obtained prior to the execution of the agreement by the Associate Dealer. Seller and Dealer will use due diligence in requiring such Associate Dealers to keep and perform the terms of such agreements. Seller, or Dealer with the consent of Seller, may terminate an agreement with an Associate Dealer upon such terms and conditions as may be specified in such agreement.

B. Failure to appoint

If Dealer fails or neglects to appoint Associate Dealers upon request of Seller within three (3) months after such request, Seller shall have the right to appoint Associate Dealers at the places designated.

C. Subrogation

If this Agreement is terminated, Seller, at its option, shall immediately be subrogated to all the rights of Dealer with Associate Dealers appointed hereunder with regard to the sale of new Chev-

rolet motor vehicles, chassis, parts and accessories. In furtherance thereof, Dealer will execute written assignments to Seller on request. In no event, however, will Seller be responsible for or Dealer be relieved from any previous obligations, acts or defaults of Dealer.

TERMINATION OF AGREEMENT

26. TERMINATION

A. Termination by dealer

Dealer may terminate this Agreement by written notice of termination delivered to Seller, such termination to be effective one (1) month after receipt by Seller of such notice.

B. Termination for cause

(1) If Seller or Dealer requires a license for the performance of any obligation hereunder or in connection herewith in any state or jurisdiction where this Agreement is to be performed, then and in such event if either of the parties hereto shall fail to secure or maintain a license or renewal thereof, or if such license shall be suspended or revoked, either party may immediately terminate this Agreement and all orders theretofore given to Seller and not delivered, by giving to the other party written notice of such termination.

(2) If Dealer does not develop the sale of Chevrolet motor vehicles and chassis to the satisfaction of Seller or does not conduct his business in accordance with any requirement set forth in Paragraphs 11 and 12, Paragraphs 14 to 19,

inclusive, or Paragraph 21 hereof, to the satisfaction of Seller, Seller may terminate this Agreement by giving to Dealer written notice of termination to be effective three (3) months after receipt thereof.

(3) Seller may terminate this Agreement immediately by delivering to Dealer or his representative written notice of such termination in the event of the happening of any of the following:

a. Death, incapacity, or the removal, resignation, withdrawal, or elimination from the dealership for any reason of Dealer or any person named in Paragraph Third of this Agreement.

b. Any sale, transfer, relinquishment, voluntary or involuntary, by operation of law or otherwise, of any substantial interest in the direct or indirect ownership or management of the Dealer or dealership.

c. Any dispute, disagreement, or controversy between or among principals, partners, managers, officers or stockholders of Dealer which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

d. Insolvency of Dealer; the filing of a voluntary petition in bankruptcy by Dealer; the filing of a petition to have Dealer declared bankrupt, provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Dealer, provided such appointment is not vacated within thirty (30) days from the date of such appointment; the execution by Dealer of an assignment for the benefit of creditors; the conviction of Dealer or any principal of-

floor, or manager of Dealer of any crime which, in the opinion of Seller, may adversely affect the ownership, operation, management, business or interest of Dealer, dealership, or Seller.

(4) Seller or Dealer may terminate this Agreement immediately by delivering to the other party written notice of termination in the event that the other party violates or fails to comply with any term or provision of this Agreement for which termination is not otherwise specifically provided for in this Paragraph 30.

GENERAL PROVISIONS

30. DEALER NOT MADE AGENT OR LEGAL REPRESENTATIVE OF SELLER

This Agreement of which these Terms and Conditions are a part does not constitute Dealer the agent or legal representative of Seller for any purpose whatsoever. Dealer is not granted any express or implied right or authority to assume or to create any obligation or responsibility to behalf of or in the name of Seller or to bind Seller in any manner or thing whatsoever.